

# Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1319

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UNITED STATES OF AMERICA,

*Petitioner,*

—v.—

UMBERTO JOSE CHAVEZ, ET AL.

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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CRIMINAL DOCKET

UNITED STATES DISTRICT COURT

CR-71-406 SAW

THE UNITED STATES

vs.

UMBERTO JOSE CHAVEZ  
aka PELON

IRENE CHAVEZ

JAMES FERNANDEZ

ANN FERNANDEZ

OLIVIA MIRAMONTES  
aka OLIVIA MONTES

JESSE BUSTAMANTE

ARMANDO RAMIREZ  
aka MANDO

CARMEN RAMIREZ

DELORES FERNANDEZ

GEORGE APODACA

MARGARET APODACA

VERNON BACA

FILEMON MIRAMONTES

PEDRO ARAUJO

21:178, 174 Conspiracy to Import and Distribute Heroin;

18:1952 Interstate Travel with the intent to promote a business Enterprise Involving Narcotics.

Three (3) Counts

## RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1971	
May 6	Ord. Indictment filed, B/W to issue to the deft. (Pedro Araujo) bail \$25,000.00, Summons to issue to all other defts. ret. 6/3/71 GBH
	1. Filed Indictment, Issued summons on all defts. Bench Warrant as to the deft (Pedro Araujo) Bail \$25,000.00 GBH
Jul 9	18. Filed No of Mo for Bill of Particulars on 13 August 71 at 11:00 A.M.
	9 19. Filed Mo for discovery.
	9 20. Filed Mo for Supplemental Bill of Particulars.
	9 21. Filed Mo for supplemental Bill of Particulars as to Umberto Jose
	9 22. Filed Points and Auths in suppt of defts mo for discovery and Inspection
Jul 9	23. Filed No of Mo for discovery on 13 Aug 71 at 11:00 A.M.
	9 24. Filed ORD appointing counsel.
Jul 9	ORD aft hrg-defts Mo for discovery & Mo for bill of particulars ORD filed Govt response to mos to be filed by 8/6/71-case con't to 8/13 at 11:00 AM for plea and mos as to all defts.
Jul 29	27. Filed Govt's response to defts Mo for Discovery.
	29 28. Filed Govt's Mo and Memo for discovery.
	29 29. Filed Govt's response to Mo for Defts for bill of particulars.

DATE	PROCEEDINGS
1971	
Dec 15	ORD: defts Chavez, Chavez, Apodaca, Fernandez, Fernandez, Miramontes, Bustamante, Ramirez, Ramirez, Fernandez, Apodaca, Baca pres w/att. all defts Plead NOT Guilty, Ord, Disc to be completed 20 days before trial, all motions to be filed 2 weeks before hearing date, response 1 week before hearing date, Defts need not appear for motions, Ord: case set for July trial on 4/3/72 at 9:30, deft Olivia Miramontes to appear 12/16/71
1972	
Jan 11	60. Filed ORD dismissing Indictment as to Filemon Miramontes.
Jan 28	64. Filed No of mo and mo for discovery on 2-3-72 as to George Apodoca.
Feb 3	ORD aft hrg-Apodaca pres w/attny-defts mo for discovery granted—4-6-72 final day for hrg mos-case con't to 5-8-72 at 9:30 am for jr. trial. SAW
Feb 3	65. Filed ORD granting mo for discovery of deft George Apodaca. SAW
Feb 11	66. Filed pltfs memo of discovery.
Mar 2	78. Filed ORD re matters of disc not stipulated to by all parties—all mos DENIED; Govt to provide agreed disc material no later than 20 days prior to trial; Defts' mo for Bill of Particulars is GRANTED as to requests 4, 5 & 6. All other requests are DENIED. —SAW
Mar 2	79. Filed deft APODACA's applic for ord unsealing certain material for incl in Ct file
Mar 6	81. Filed ORD for unsealing of docs & papers in possession of Clerk so they may be filed as part of record in this case —SAW

DATE	PROCEEDINGS
1972	
Mar 7	82. Filed Application of Maurice K. Merten in supp of ord authorizing interception of wire communications of "Pelone" et al 83. Filed Application of M. K. Merten in supp of ord authorizing interception of wire communications of U. Chavez et al 84. Filed afdvt of Maurice K. Merten 85. Filed afdvt of Peter B. Niblo 86. Filed afdvt of Julius Beretta
Mar 22	87. Filed ORD ext time to 4-27-72 for filing all pre-tr mos, responses by 5-4-72; hrg of pre-tr mos before SAW 5-11-72/2:15; Trial set for 5-30-72 before Judge FREY.
Apr 13	89. Filed deft APODACA's not. & mo to suppress evid, 5-11-72/2:15 (w/supptg docs & exhibits attached)
Apr 27	90. Filed mo by all defts to suppress evidence (w/pts & auths) 91. Filed deft FERNANDEZ (Dolores) not. & mo for suppl bill of particulars & for performance of stip discovery by pltf, 5-11-72/2:15
May 1	92. Filed defts' not. & mo to suppress wiretap evidence, 5-11-72/2:15
May 2	93. Filed afdvt of serv of deft's mo to suppress
May 3	94. Filed pltf's mo for addtl time to file pre-tr mo
May 4	97. Filed Govt Response to defts' mo to suppress evidence 98. Filed Govt's Opp to deft's mo to suppress
May 5	99. Filed ORD: time for filing response to defts' mo to suppress is ext to 5-9-72 —SAW

DATE	PROCEEDINGS
1972	
May 9	100. Filed Pltf's Opp to defts' mo to suppress wiretap evidence
	101. Filed clerk's not. cont'g case from 5-11 to 5-18-72/2:15
May 11	102. Filed Reply to Opp of USA to defts' mo to suppress
May 12	104. Filed afdvt of serv of Reply to pltf's opp to mo to suppress
May 15	124. Filed Reply to Opp of USA to defts' mo to suppress (same as docket #1 but on legal size paper)
	125. Filed Traverse to Gov't Response to defts' mo to suppress
May 18	ORD: Mo to suppress wiretap evidence—GRANTED; Mo for Suppl Bill of Particulars—GRANTED; Mo for related case status of CR-72-217—GRANTED (CR-72-217 to trial CR-71-406) —SAW
May 31	131. Filed ORD suppressing wiretap evidence & fruits thereof —SAW
	132. Filed Memo & ORD: wiretap communications intercepted purs to ords of Ct dtd 2-18-71 & 2-25-71, & fruits thereof, are suppressed. —SAW
June 13	136. Filed pltf's Memo of Discovery (afdvts of Carlo Lo Presti & Phillip T. White attached)
June 15	137. Filed pltf's not. of appeal from ord suppressing evidence
June 26	Mailed not. to counsel & 9th CCA of filing appeal
July 5	138. Filed Designation of record on appeal.
July 17	MADE, MAILED Record on Appeal to 9th CCA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CR. 71-406-SAW

No. 5

[Filed Mar. 7, 1972, C. C. Evensen, Clerk]

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

APPLICATION

Maurice K. Merten, an Attorney of the Organized Crime and Racketeering Section, San Francisco Strike Force, United States Department of Justice, being duly sworn states:

1) This sworn application is submitted in support of an Order authorizing the interception of wire communications. This application has been submitted only after lengthy discussions concerning the necessity for such application with various officials of the Organized Crime and Racketeering Section, United States Department of Justice, Washington, D. C., together with Agents of the Bureau of Narcotics and Dangerous Drugs.

2) He is an "investigative or law enforcement officer—of the United States" within the meaning of Section 2510(7) of Title 18, United States Code, that is—he is an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

3) Pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable John N. Mitchell, has specially designated in the proceeding the Assistant Attorney General for the Criminal Division of the United States Department of Justice, The Honorable Will Wilson, to authorize affiant to make this application for an Order authorizing the interception of wire com-

munications. This letter of authorization signed by the Assistant Attorney General is attached to this application as Exhibit A.

4) This application seeks authorization to intercept wire communications of Umberto Jose Chavez, also known as "Pelone", Lionel Medina Costilla, also known as Danny Costilla, Jose Ybarra-Rivera, and others as yet unknown, concerning the offenses enumerated in Section 2516 of Title 18, United States Code; offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package, and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704(a) and 7237(a) of Title 26, United States Code, which have been committed and are being committed by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown.

5) He has discussed all the circumstances of the above offenses with Special Agent Julius Beretta of the San Francisco, California, office of the Bureau of Narcotics and Dangerous Drugs, who has directed and conducted the investigation herein, and has examined the affidavit of Special Agent Julius Beretta (attached to this application as Exhibit B and incorporated by reference herein) which alleges facts therein in order to show that:

A. There is probable cause to believe that Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown have committed and are committing offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses in violation of Section 174, Title 21, United States Code, and Sections 4704(a) and 7237(a) of Title 26, United States Code.

B. There is probable cause to believe that the wire communications of Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, concerning these offenses will be obtained through their interception, authorization for which is herein applied. In particular, these wire communications will concern:

1. The placing of orders by Umberto Jose Chavez to Jose Ybarra-Rivera and others as yet unknown outside the United States for large quantities of heroin to be illegally imported into the United States.

2. The communications between Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown both inside and outside the United States, through which a system of couriers transporting heroin from the United States-Mexican border to Northern California is coordinated.

3. The communications between Umberto Jose Chavez and Lionel Medina Costilla, and others as yet unknown within the State of California, concerning the distribution to a large geographical area of Northern California, of large quantities of heroin illegally imported into the United States from Mexico.

C. Normal investigative procedures reasonably appear unlikely to succeed if tried.

D. There is probable cause to believe telephone 415-656-7173, subscribed to in the name of Umberto Jose Chavez and located at 220 Carmelita Place, Fremont, California, has been used and is being used by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, in connection with the offenses described in 5(A) above.

6) No other application has been made to any Judge for authorization to intercept or for approval of interception of wire or oral communications involving any of the same persons, facility, or place specified herein.

WHEREFORE, your affiant believes that probable cause exists to believe that Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, are engaged in the commission of offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses in violation of Section 174, Title 21, United States Code, and Sections 4704(a) and 7237(a) of Title 26, United States Code, and that telephone number 415-656-7173, subscribed to in the name of Umberto Jose Chavez, and located at 220 Carmelita

Place, Fremont, California, has been used and is being used by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, in connection with the offenses described in 5(A) above, and that communications of Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, concerning these offenses will be intercepted to and from the above described telephone and that normal investigative procedures reasonably appear unlikely to succeed.

On the basis of the allegations contained in this application and upon the basis of the affidavit of Special Agent Julius Beretta, Bureau of Narcotics and Dangerous Drugs, which is attached hereto and made a part thereof, affiant requests this Court to issue an Order pursuant to the power conferred on it by Section 2518 of Title 18, United States Code, authorizing Special Agents of the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice, and Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury, to intercept wire communications to and from the above described telephone until communications are intercepted which reveal the manner in which Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others yet unknown, illegally import, receive, transport, conceal, distribute and sell narcotic drugs not in or from the original stamped package and conspire to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704(a) and 7287(a) of Title 26, United States Code, and which reveal the identity of their confederates, their places of operation and the nature of the conspiracy involved therein, for a period of twenty (20) days from the date of this Order, whichever is earlier.

The affiant also requests that the Court direct that the Pacific Telephone and Telegraph Company, a communications common carrier as defined in Section 2510(10) of Title 18, United States Code, shall forthwith furnish the applicant and the Bureau of Narcotics and Dangerous Drugs all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and

with a minimum of interference with the services that such carrier is according the persons whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the Pacific Telephone and Telegraph Company to be compensated for by the applicant or the Bureau of Narcotics and Dangerous Drugs at the prevailing rates.

/s/ Maurice K. Merten  
MAURICE K MERTEN  
Attorney  
Department of Justice  
San Francisco, California

Subscribed and sworn before me this 17 day of February 1971

/s/ Oliver J. Carter  
United States District Judge

Assistant Attorney General  
Criminal Division

DEPARTMENT OF JUSTICE  
Washington 20530

Feb. 18, 1971

Mr. Maurice K. Merten  
Special Attorney  
San Francisco Strike Force  
San Francisco, California

Dear Mr. Merten:

This is with regard to your request for authorization to make application pursuant to the provisions of Section 2518 of Title 18, United States Code, for an Order of the Court authorizing the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, United States Department of the Treasury, to intercept wire communications to and from telephone number 415-656-7173, located at 220 Carmelita Place, Fremont, California, in connection with the investigation into possible violations of Title 21, United States Code, Section 174, and Title 26, United States Code, Sections 4704 and 7237, by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown.

I have reviewed your request and the facts and circumstances detailed therein and have determined that there exists probable cause to believe that Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown have committed, are committing, or are about to commit offenses enumerated in Section 2516 of Title 18, United States Code, to wit: violations of Title 21, United States Code, Section 174, and Title 26, United States Code, Sections 4704 and 7237. I have further determined that there exists probable cause to believe that the above persons make use of the described facility in connection with those offenses, that wire communications concerning the offenses will be intercepted, and that normal investigative procedures reasonably appear to be unlikely to succeed if tried.

Accordingly, you are hereby authorized under the power specially delegated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, to make application to a judge of competent jurisdiction for an Order of the Court pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, United States Department of the Treasury, to intercept wire communications from the facility described above, for a period of twenty (20) days.

Sincerely,

/s/ Will Wilson  
WILL WILSON  
Assistant Attorney General

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. 5

IN THE MATTER OF THE APPLICATION OF THE UNITED  
STATES OF AMERICA FOR AN ORDER AUTHORIZING THE  
INTERCEPTION OF WIRE COMMUNICATIONS

AFFIDAVIT IN SUPPORT OF APPLICATION

Julius Beretta, Special Agent, Bureau of Narcotics and Dangerous Drugs, San Francisco Office, United States Department of Justice, being duly sworn, states:

1) I am a Special Agent with the Bureau of Narcotics and Dangerous Drugs and have been so employed for two and one half years, during which I have been assigned to the San Francisco, California, Office of the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice. I am an "investigative or law enforcement officer—of the United States" within the meaning of Section 2510(7) of Title 18, United States Code, that is—I am an officer of the United States who is authorized by law to conduct investigation of and to make arrests for offenses enumerated in Section 2516, Title 18, United States Code.

2) This affidavit seeks authorization to intercept wire communications to and from telephone number 415-656-7173, subscribed to in the name of Umberto Jose Chavez, and located at 220 Carmelita Place, Fremont, California, in connection with the commission of certain offenses enumerated in Section 2516 of Title 18, United States Code, that is offenses involving the importation, receipt, transportation, concealment, distribution, and sale of illegal narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses in violation of Section 174, Title 21, United States Code, and Sections 4704(a) of Title 26, United States Code.

3) I have participated in the investigation of possible violations of the Federal Drug Laws listed in paragraph (2) and committed by Umberto Jose Chavez, also known

as "Pelone", Lionel Medina Costilla, also known as Danny Costilla, Jose Ybarra-Rivera, and others as yet unknown. As a result of my personal participation in these investigations and from the reports made to me by other Special Agents of the Bureau of Narcotics and Dangerous Drugs and from other law enforcement officers, and their official reports, of Fremont, California, Union City, California, and elsewhere, I am familiar with all the circumstances of the offenses. On the basis of that familiarity, I alleged the facts contained in the following numbered paragraphs show that:

A. There is probable cause to believe that Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, have committed and are committing offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a), Title 26, United States Code.

B. There is probable cause to believe that wire communications of Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, concerning these offenses will be obtained through their interception, authorization for which is herein applied. In particular these wire communications will concern:

1. The placing of orders by Umberto Jose Chavez to Jose Ybarra-Rivera and others as yet unknown outside the United States, for large quantities of heroin to be illegally imported into the United States.

2. The communications between Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown both inside and outside the United States through which a system of couriers transporting heroin from the United States-Mexican border to Northern California is coordinated.

3. The communications between Umberto Jose Chavez, Lionel Medina Costilla, and others as yet unknown within the State of California, concerning the distribution, to a large geographical area of Northern California, of

large quantities of heroin, illegally imported into the United States from Mexico.

C. Normal investigative procedures reasonably appear unlikely to succeed if tried.

D. There is probable cause to believe telephone 415-656-7173, subscribed to in the name of Umberto Jose Chavez and located at 220 Carmelita Place, Fremont, California, has been used and is being used by Umberto Jose Chavez in connection with the offenses described in paragraph 3(A) above.

#### FACTS AND CIRCUMSTANCES

PROBABLE CAUSE TO BELIEVE THAT UMBERTO JOSE CHAVEZ IS USING TELEPHONE NUMBER 415-656-7173 IN CONNECTION WITH THE COMMISSION OF OFFENSES INVOLVING THE ILLEGAL IMPORTATION, RECEIPT, TRANSPORTATION, CONCEALMENT, DISTRIBUTION, AND SALE OF NARCOTIC DRUGS NOT IN OR FROM THE ORIGINAL STAMPED PACKAGE IN VIOLATION OF SECTION 174, TITLE 21, UNITED STATES CODE, AND SECTIONS 4704 (a) AND 7237 (a) OF TITLE 26, UNITED STATES CODE.

4) Umberto Jose Chavez, alias Pelone, alias Humberto Jose Chavez, alias Jose Umberto Chavez, alias Bob Chavez, was born February 27, 1936, in Encinitas, California and is a male of Mexican extraction. He is 5'9" tall, 185 pounds, black hair, brown eyes, black moustache, and walks with a pronounced limp. Chavez is further identified by FBI number 191 720 C, California CII number 1 010 524, Union City Police Department number 167-0794, and Fremont Police Department number 5765. Chavez has been known to the former Federal Bureau of Narcotics and present Bureau of Narcotics and Dangerous Drugs since April of 1963 as a major narcotics violator. On April 24, 1963, Chavez was arrested for possession of heroin for sale, possession of heroin, and possession of marijuana. On December 16, 1963 he was sentenced on the possession of heroin for sale and the pos-

session of marijuana charges, and received a sentence of nine months in the Alameda County jail, three years suspended State prison, and three years probation. On December 18, 1965, Chavez was arrested by local authorities for possession of marijuana. He received a sentence of 10 days in the Alameda County jail to be served on the week-ends for this offense. On April 26, 1968, Chavez was arrested by the Union City Police Department for possession of heroin for sale and furnishing marijuana to a minor. He pled guilty to furnishing marijuana to a minor and was sentenced March 3, 1968 to one year in the Alameda County jail, three years suspended State prison, and three years probation. The charge of possession of heroin for sale was dismissed against Chavez when a female associate pled guilty to the charge. Chavez was also arrested in 1966 and 1970 for failing to register as a narcotic offender at the international border of San Ysidro, California. Chavez resides with his wife Irene at 220 Carmelita Place, Fremont, California.

5) Lionel Medina Costilla, alias Danny Costilla, is a Mexican male, born February 16, 1941, in San Marcos, Texas. He is 5'6" tall, weighs 135 pounds, has a medium build, black hair and brown eyes. Costilla can further be identified by Union City Police Department number J 392463 and social security number 311-34-8075. Costilla lives at 33537 7th Street, Union City, California and is employed by the "B" Disposal Company, Fremont, California. On October 7, 1970, he was arrested for possession of heroin for sale in Union City and this case is still pending court action. At the time of his arrest, Costilla had in his possession approximately 18 ounces of heroin contained in "Trojan" brand rubber prophylactics.

6) Jose Ybarra-Rivera is a male of Mexican extraction, birth and citizenship. He is approximately 5'8" tall, 170 pounds, balding with gray hair, he is presently residing at 1594 Obregon, Culiacan, Sinaloa, Mexico.

7) Confidential informant number 1, a Mexican citizen and former resident of the Culiacan area, Sinaloa, has been providing me with information regarding criminal activities since October 1969. The information furnished by informant number 1 has in the past been

proven reliable and accurate and has been corroborated by my own independent investigations. On one occasion information furnished by informant number 1 resulted in the arrest and conviction of an individual for violation of the Federal Narcotics Laws. Informant number 1 advised me that he has in the past had personal contact with Jose Ybarra-Rivera in Culiacan, Sinaloa, Mexico, and that on January 18, 1971, he contacted Jose Ybarra-Rivera and discussed the purchase from him (Jose Ybarra-Rivera) of kilogram quantities of heroin. In this conversation Jose Ybarra-Rivera related that he could supply such quantities of heroin.

8) Rudolpho Ybarra-Rivera, also a resident of Culiacan, Sinaloa, Mexico, is the brother of Jose Ybarra-Rivera. On January 18, 1971, Joseph Baca, Assistant Regional Director, Region No. 14, advised me that on December 19, 1969, he interviewed David Romero-Perea, an individual on whom the Bureau of Narcotics and Dangerous Drugs files show an extensive narcotics record. During the course of this discussion, David Romero-Perea related that Rudolpho Ybarra-Rivera was his source of supply for narcotics. David Romero-Perea is presently a Federal fugitive.

9) Sgt. Stannard B. Jensen, Officer in Charge, Vice Control Section, Fremont Police Department, Fremont, California, advised me of the following:

A. In April of 1970 a Fremont, California pharmacy contacted him (Sgt. Jensen) and reported that a male Mexican was buying an unusually large amount of non-lubricated "Trojan" brand rubber prophylactics approximately every 10 days and that this pattern had been established since March, 1970.

B. When he (Sgt. Jensen) showed the pharmacy employees a number of photographs of different Mexican-American suspects, they immediately identified Umberto Jose Chavez as the purchaser they had reported.

C. From April to August of 1970 this pharmacy continued to report to him (Sgt. Jensen) each time Umberto Jose Chavez purchased rubber prophylactics, and as the investigation continued, the pharmacy employees reported that a second Mexican male, operating an automobile

with California license number YAY 355, often accompanied Chavez during these purchases. During this period this pharmacy reported that Chavez had purchased 1,152 rubber prophylactics.

10) It has been determined through records of the Department of Motor Vehicles, Sacramento, California, that California registration YAY 355 is registered in the name of Lionel Medina Costilla for a 1968 Dodge Station Wagon.

11) Sgt. Jensen further advised me that on January 12, 1971, he was contacted by another Fremont, California, pharmacy which reported that a male Mexican had, on that day, purchased 432 non-lubricated "Shiek" brand rubber prophylactics and 144 non-lubricated "Trojan" brand rubber prophylactics and that when he (Sgt. Jensen) showed the pharmacy employees photographs of Umberto Jose Chavez they identified Chavez as the purchaser of the rubber prophylactics.

12) Through my experiences as a Special Agent of the Bureau of Narcotics and Dangerous Drugs and my association with other Agents of the Bureau of Narcotics and Dangerous Drugs, I know that non-lubricated prophylactics are commonly used to package bulk heroin.

13) Sgt. Jensen, Officer in Charge, Vice Control Section, Fremont Police Department, Fremont, California, has also advised me that on October 20, 1970, he (Sgt. Jensen) was furnished information by confidential informant number 2 who in the past provided information which, when corroborated by an independent investigation by him (Sgt. Jensen) had proven accurate and reliable and resulted in the arrest of an individual on a felony narcotic charge, which case is still pending. Informant number 2 related that he (informant number 2) had known Umberto Jose Chavez for more than a year and they had had numerous conversations during the period July 1970 to August 1970 regarding Umberto Jose Chavez's illegal drug activities. During these conversations Umberto Jose Chavez related that he received 120 ounces of high grade heroin in approximately three week intervals, that the heroin is adulterated by him (Chavez) three times and is packaged in rubber proph-

lactics, and that it is then distributed in the California cities of Tracy, Stockton, Sacramento, Oakland, and San Francisco.

14) On January 6, 1971, Detective Sgt. Kane, Union City Police Department, Union City, California, advised me that confidential informant number 3 had provided him with information regarding criminal activities which when verified by him (Detective Sgt. Kane) resulted in the arrest and conviction of an individual for burglary.

15) On January 14, 1971, I contacted Charles Foster, Under-Sheriff, Siskayou County, who was formerly employed by the Union City Police Department Union City, California. Under-Sheriff Foster told me that from 1966 to 1968, while he was a police officer for the Union City Police Department, informant number 3 had provided him with information on three different occasions which, when verified, was found to be true on each occasion and which aided in the arrest and conviction of three individuals; one on a felony narcotics charge, one for armed robbery, and one for a check violation.

16) On January 6, 1971, informant number 3 furnished me with the following information:

A. That he (informant number 3) had, over the past year, purchased heroin from Umberto Jose Chavez approximately 100 times and the last purchase he made was during the period December 20 to 31, 1970.

B. Each time he (informant number 3) purchased heroin from Chavez it was packaged in non-lubricated rubber prophylactics.

C. That he (informant number 3) would order the heroin by calling Umberto Jose Chavez at his (Chavez's) residence at Union City, California and the place and time of the transaction would then be set. When he (informant number 3) and Chavez would meet at the time and place, Chavez would often deliver the heroin immediately. If immediate delivery was not made, Chavez would drive him (informant number 3) around in order to avoid detection and, after a period of time, direct him (informant number 3) to a location where the heroin was hidden.

D. That in the early part of 1970 Umberto Jose Chavez showed him (informant number 3) what Chavez described as three kilograms of heroin which were in the rear of Chavez's automobile. The heroin was packaged in rubber prophylactics and nearly filled a grocery bag.

17) On January 15, 1971, Detective Sgt. Kane, Union City Police Department, Union City, California, advised me that he had, on that date, contacted informant number 3 and had been told by informant number 3 that the last time he (informant number 3) had purchased heroin from Chavez, he (informant number 3) had called Chavez at telephone number 489-0869, and that Chavez periodically had his telephone number changed.

18) From surveillance by Agents of the Bureau of Narcotics and Dangerous Drugs, Officers of the Union City and Fremont Police Departments, United States Postal Records, and records of the Pacific Telephone and Telegraph Company, San Francisco, California, it was determined that Umberto Jose Chavez and his wife Irene Chavez resided at 33642 7th Street, Union City, California up to approximately December 11, 1970. The telephone located at that residence and subscribed to in the name of Florentino Chavez was assigned the following numbers: 415-471-1193 changed July 13, 1970 to 415-471-4288, changed September 17, 1970 to 415-489-0869, changed January 4, 1971 to, and presently, 415-489-0505. On or about December 11, 1970, Chavez and his wife moved from 33642 7th Street, Union City, California, to 220 Carmelita Place, Fremont, California, but continued phone service at the Union City address. On December 18, 1970, service was initiated for telephone number 415-656-7173 subscribed in the name of Umberto Jose Chavez and located at 220 Carmelita Place, Fremont, California.

19) Surveillance by the various law enforcement agencies named in paragraph (18) above also determined that:

A. Umberto Jose Chavez and his wife Irene were the only adults living at 33642 7th Street, Union City, California.

B. As of the date of this affidavit the residence located at 33642 7th Street, Union City, California is vacant.

20) The telephone records maintained by the Pacific Telephone and Telegraph Company, San Jose, California, were examined relative to telephone number 415-471-1193, changed to 415-471-4288, changed to 415-489-0869, changed to and presently 415-489-0505 and telephone number 415-656-7173. These records for the period February 11, 1970 to February 5, 1971 (in the case of 415-489-0505) and December 18, 1970 to February 5, 1971 (in the case of 415-656-7173), reflect extensive telephone traffic from those numbers to Culiacan, Mexico and Tijuana, Mexico, and more than fifty collect calls from pay telephones at San Ysidro, Chula Vista, and San Diego, California to those numbers. In particular the toll records disclose:

A. The long distance telephone traffic over telephone number 415-656-7173, located at 220 Carmelita Place, Fremont, California, that telephone located in the new residence of Umberto Jose Chavez which began service December 18, 1970, is similar to and a continuation of the long distance telephone traffic previously carried on over telephone number 415-471-1193 changed to 415-471-4288, changed to 415-489-0869, and changed to and presently 415-489-0505 before Chavez changed residences.

B. Telephone 415-471-1193, changed to 415-471-4288, changed to 415-489-0869, changed to and presently 415-489-0505 is still in service but not presently being used to conduct long distance telephone traffic to Mexico.

C. Collect calls from unknown pay telephones in San Ysidro, Chula Vista, and San Diego, California to telephone 415-471-1193, changed to 415-489-4288, changed to 415-489-0869, changed to and presently 415-489-0505 were interspersed with calls from that telephone to Mexico, and that same pattern is continuing with telephone 415-656-7173.

D. From January 11, 1971 to February 5, 1971, in excess of 120 multi-message unit calls were placed from telephone 415-656-7173. Multi-message units reflect calls made to surrounding communities.

21) Attached hereto and made a part thereof are the following appendices which reflect a portion of the long distance telephone traffic between California and Mexico conducted over telephone 415-471-1193, changed to 415-471-4288, changed to 415-489-0869, changed to and presently 415-489-0505 and telephone 415-656-7173.

A. Appendix A-1, a chronological list of long distance telephone traffic between specific Mexican telephones and telephone number 415-471-1193, changed to 415-471-4288, changed to 415-489-0869, changed to and presently 415-489-0505, from February 11, 1970 to February 5, 1971.

B. Appendix B-1, a monthly summary of long distance telephone traffic between specific Mexican telephones and those telephones listed in paragraph 21(A) above from February 11, 1970 to February 5, 1971.

C. Appendix C-1, a summary of long distance calls between specific Mexican telephones and those telephones listed in paragraph 21 (A) above for the period February 11, 1970 through February 5, 1971.

D. D-1, a chronological list of collect calls from unknown pay telephones in San Ysidro, Chula Vista, and San Diego, California to those telephones listed in 21 (A) from February 9, 1970 to February 5, 1971.

E. Appendix A-2, a chronogolical list of long distance telephone traffic between specific Mexican telephones and telephone number 415-656-7173 from December 18, 1970 to February 5, 1971.

F. Appendix B-2, a monthly summary of long distance telephone traffic between specific Mexican telephones and telephone 415-656-7173 from December 18, 1970 to February 5, 1971.

G. Appendix C-2, a summary of long distance calls between specific Mexican telephones and telephone 415-656-7173 for the period December 18, 1970 to February 5, 1971.

H. D-2, a chronological list of collect calls from unknown pay telephones in San Ysidro, Chula Vista, and San Diego, California to telephone 415-656-7173 from December 18, 1970 to February 5, 1971.

22) The Mexican Telephone numbers have been identified as follows:

A. 903-385-5054 is subscribed to by the La Sonorita Grocer, Jose Vasquez Burel, Calle 9A, 776 TTE, Groc., East Alvert, Colonia Libertad, Tijuana.

B. 903-386-4640

903-386-4641 are both subscribed to by the Reno Motel, Dr. Longois Manoguin, owner, Camino Ensenada 500 ESQ. GOB. Lugo Davilla, Tijuana. On January 18, 1971, I contacted Joseph Baca, Assistant Regional Director, Region No. 14, Bureau of Narcotics and Dangerous Drugs, who advised me that from his previous assignment in the former Federal Bureau of Narcotics as a liaison officer between that Bureau and the Mexican Federal Police, and his present position of Assistant Regional Director, he is familiar with the narcotics traffic conducted between the United States and Mexico. Mr. Baca told me that the Reno Motel is located a short distance outside of Tijuana, Mexico, and, in investigations he participated in, served as a meeting place for drug buyers awaiting shipments of drugs from the interior of Mexico.

C. 903-385-2267 is subscribed to by Dr. Septimo Men-dez, 704 Bojas, C.P.T.O.Y.D. Mira, Tijuana.

D. 903-385-6208 is subscribed to by Maria De Jesus Navarez, Calle 4th Street, 494 Tijuana, Mexico. An examination of Bureau of Narcotics and Dangerous Drugs intelligence files indicates that this telephone number, then subscribed to by the same individual and located at the same address was used in 1962 by Francisco Campos, at that time considered by the former Federal Bureau of Narcotics to be the largest marijuana trafficker in Tijuana, Mexico.

E. 2-0382 is subscribed to by Jose Ybarra-Rivera, 1594 Obregon, Culican, Sinaloa, Mexico.

F. 2-1117 is subscribed to by the Hotel El Gran, 5th of February Street, Culiacan, Sinaloa, Mexico.

**NORMAL INVESTIGATIVE PROCEDURES  
REASONABLY APPEAR UNLIKELY TO SUCCEED**

23) Based on my knowledge and experience as a Special Agent of the Bureau of Narcotics and Dangerous

Drugs of narcotic cases, and association with other Special Agents who have conducted investigations of illegal narcotics traffic, normal investigative procedures appear unlikely to succeed in establishing:

A. That Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, are involved in illegal narcotic activities in violation of Federal Laws;

B. The full extent of this conspiracy to import and distribute illegal narcotics, that is, the identity of the co-conspirators, aiders, and abettors;

C. The hierarchy of this organization illegally importing narcotics from Mexico and distributing them in Northern California.

24) My experiences and the experiences of other Special Agents of the Bureau of Narcotics and Dangerous Drugs has shown that individuals dealing in large quantities of narcotics are particularly covert in their activities and wary of surveillance by State and Federal law enforcement personnel. Such dealers very rarely keep records, deal personally with a very few trusted individuals and isolate themselves from other individuals in the distribution organization. Through experience it has also been learned that individuals dealing in large quantities of narcotics frequently change telephone numbers to avoid detection and receive, store, and deliver narcotics at varying locations.

25) At this time there is no known undercover access to Umberto Jose Chavez or his organization. Confidential informants 2 and 3 referred to in this affidavit both report that Umberto Jose Chavez is extremely cautious and will not sell heroin to individuals who he has not known for a long period of time. These informants report that Umberto Jose Chavez has a reputation for furnishing bail and legal aid to confederates who are arrested and, therefore, he has minimized the pressures on those arrested to cooperate.

26) The confidential informants referred to in this affidavit have all refused to testify against Umberto Jose Chavez or the members of his organization because of fear for their personal safety.

27) All attempts to surveil Umberto Jose Chavez have met with little success. When driving in an automobile, Umberto Jose Chavez is constantly alert for surveillance and frequently squares blocks and makes u-turns in order to elude any tailing automobiles.

28) Detective Sgt. Jensen, Fremont Police Department, Fremont, California, reported to me that he had contacted Umberto Jose Chavez's probation officer, Mr. Skewis, Alameda County Probation Office, and that on two occasions Umberto Jose Chavez reported to Mr. Skewis that agents were following him (Umberto Jose Chavez) in automobiles of a particular model and color. On both of those occasions I was a participating agent in the surveillance of Umberto Jose Chavez and the descriptions of the automobiles were accurate.

29) For the reasons set out here and above, all normal avenues of investigation are closed and it is my belief that the only reasonable way to develop the necessary evidence of violations of Title 21, United States Code, Section 174, and Title 26, United States Code, Sections 4704 (a) and 7237 (a) by those persons named herein is to intercept wire communications to and from the telephone described in paragraph (2) above.

30) Therefore, based on the facts related above and my experience as a Special Agent of the Bureau of Narcotics and Dangerous Drugs, I believe and have reason to believe that probable cause allegations in the above paragraphs have been sustained.

31) No other application is known to have been made for authorization to intercept wire communications from telephone 415-656-7173, located at 220 Carmelita Place, Fremont, California.

32) The activities to be telephonically covered are believed to represent a continuing criminal conspiracy. It is further believed that communications concerning the offenses enumerated in paragraph 3 (A) will be conducted over the above described telephone. WHEREFORE because of the existence of the facts and underlying circumstances of the continuing investigation listed above in paragraphs (4) through (28), I submit that the probable cause as submitted in paragraph 3 (A), 3 (B), and

3 (D) exists and that the investigation as set forth above has failed to provide evidence necessary to sustain prosecution of all involved individuals for violations of the offenses enumerated in paragraph 3 (A) and that extensive normal investigative procedures reasonably appear unlikely to succeed. It is requested, therefore, that this Court issue an Order authorizing Special Agents of the Bureau of Narcotics and Dangerous Drugs and Special Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury, to intercept wire communications to and from the above described telephone until communications are intercepted which reveal the manner in which Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, import, receive, transport, conceal, distribute, and sell narcotics drugs not in or from the original stamped package in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code, and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for twenty (20) days from the date of the Order, whichever is earlier.

JULIUS BERETTA  
Special Agent  
San Francisco, California  
Office

Subscribed and sworn to before me this — day of  
\_\_\_\_\_, 1971.

\_\_\_\_\_  
United States District Judge

## APPENDIX A-1

Chronological list of long distance telephone traffic between telephone 415-471-1193, changed 415-471-4288, changed to 415-489-0869, changed to, and presently 415-489-0505, subscribed to in the name of Florentino Chavez and located at 33642 7th Street, Union City, California, and Mexico from February 11, 1970 to February 5, 1971.

## Number 415-471-1193 In Service

<u>DATE</u>	<u>AREA CALLED</u>	<u>NUMBER CALLED</u>
February 11, 1970	Tijuana, Mexico	903-385-5054
February 11, 1970	Tijuana, Mexico	903-385-5054
February 12, 1970	Tijuana, Mexico	903-385-5054
February 12, 1970	Tijuana, Mexico	903-385-5054
February 12, 1970	Tijuana, Mexico	903-385-5054
March 12, 1970	Tijuana, Mexico	903-385-5054
March 12, 1970	Tijuana, Mexico	903-385-5054
March 15, 1970	Tijuana, Mexico	903-386-4640
March 16, 1970	Tijuana, Mexico	903-385-5054
March 16, 1970	Tijuana, Mexico	903-385-5054
March 16, 1970	Tijuana, Mexico	903-386-4640
March 19, 1970	Tijuana, Mexico	Collect Call From 903-386-4640
March 26, 1970	Tijuana, Mexico	903-385-5054
March 26, 1970	Tijuana, Mexico	903-385-5054
March 26, 1970	Tijuana, Mexico	903-385-5054
March 26, 1970	Tijuana, Mexico	903-385-5054
April 5, 1970	Tijuana, Mexico	903-385-5054
April 17, 1970	Tijuana, Mexico	903-386-4640
April 18, 1970	Tijuana, Mexico	903-386-4640
April 20, 1970	Tijuana, Mexico	903-386-4640
April 20, 1970	Tijuana, Mexico	903-386-4640
April 22, 1970	Tijuana, Mexico	903-386-4640
April 28, 1970	UNKNOWN	Collect Call From Mexico, Telephone Number Unknown
May 25, 1970	Tijuana, Mexico	903-386-4640
May 25, 1970	Tijuana, Mexico	903-386-4640
May 26, 1970	Tijuana, Mexico	903-386-4640
May 28, 1970	Tijuana, Mexico	903-386-4640
May 28, 1970	Tijuana, Mexico	903-386-4640

<u>DATE</u>	<u>AREA CALLED</u>	<u>NUMBER CALLED</u>
June 9, 1970	Tijuana, Mexico	903-386-4640
June 9, 1970	Tijuana, Mexico	903-386-4640
June 9, 1970	Culiacan, Mexico	2-0382
June 12, 1970	Tijuana, Mexico	903-386-4640
June 16, 1970	Tijuana, Mexico	903-386-4640
June 19, 1970	Tijuana, Mexico	903-386-4640
June 25, 1970	Tijuana, Mexico	903-386-4640
June 25, 1970	Tijuana, Mexico	Collect Call From 903-385-5054
July 2, 1970	Tijuana, Mexico	903-385-5054
July 2, 1970	Tijuana, Mexico	903-385-5054
July 2, 1970	Tijuana, Mexico	903-385-5054
July 2, 1970	Tijuana, Mexico	903-385-5054
July 2, 1970	Tijuana, Mexico	Collect Call From 903-385-2267
July 12, 1970	Tijuana, Mexico	Collect Call From 903-385-2267
<b>Number 415-471-1193 Changed to 415-571-4288 on July 13, 1970</b>		
July 13, 1970	Tijuana, Mexico	903-385-5054
July 13, 1970	Tijuana, Mexico	903-385-5054
July 13, 1970	Tijuana, Mexico	903-385-5054
July 14, 1970	Tijuana, Mexico	903-386-4640
July 16, 1970	Tijuana, Mexico	Collect Call From 903-386-4640
July 19, 1970	Tijuana, Mexico	903-386-4640
July 23, 1970	Tijuana, Mexico	903-386-4640
July 23, 1970	Tijuana, Mexico	Collect Call From 903-386-4640
July 24, 1970	Tijuana, Mexico	903-386-4640
July 24, 1970	Tijuana, Mexico	903-386-4640
July 25, 1970	Tijuana, Mexico	903-386-4640
July 25, 1970	Tijuana, Mexico	Collect Call From 903-386-4640
July 26, 1970	Tijuana, Mexico	903-386-4640
August 6, 1970	Tijuana, Mexico	903-385-5054
August 6, 1970	Tijuana, Mexico	903-385-5054
August 6, 1970	Tijuana, Mexico	903-385-5054
August 6, 1970	Tijuana, Mexico	903-385-5054
August 6, 1970	Tijuana, Mexico	903-385-5054
August 6, 1970	Tijuana, Mexico	903-385-5054
August 12, 1970	Tijuana, Mexico	903-386-4640
August 12, 1970	Tijuana, Mexico	903-386-4640
August 12, 1970	Tijuana, Mexico	903-386-4640
August 12, 1970	Tijuana, Mexico	903-386-4640
August 12, 1970	Culiacan Mexico	2-0382
August 18, 1970	Tijuana, Mexico	903-386-4640

<u>DATE</u>	<u>AREA CALLED</u>	<u>NUMBER CALLED</u>
August 26, 1970	Tijuana, Mexico	903-386-4640
August 27, 1970	Tijuana, Mexico	903-386-4640
September 6, 1970	Tijuana, Mexico	903-386-4640
September 16, 1970	Tijuana, Mexico	903-386-4640
Number 415-471-4288	Changed to 415-489-0869	on September 17, 1970
September 17, 1970	Tijuana, Mexico	903-386-4640
September 20, 1970	Tijuana, Mexico	Collect Call From 903-386-4640
September 30, 1970	Culiacan, Mexico	2-1117
October 1, 1970	Tijuana, Mexico	903-386-4640
October 2, 1970	Tijuana, Mexico	903-386-4640
October 2, 1970	Culiacan, Mexico	2-1117
October 2, 1970	Culiacan, Mexico	2-1117
October 7, 1970	Tijuana, Mexico	903-386-4640
October 7, 1970	Tijuana, Mexico	903-386-4640
October 18, 1970	Tijuana, Mexico	903-385-6208
October 20, 1970	Tijuana, Mexico	903-385-6208
October 20, 1970	Tijuana, Mexico	903-386-4640
October 23, 1970	Tijuana, Mexico	903-385-6208
October 24, 1970	Tijuana, Mexico	903-386-4640
October 25, 1970	Tijuana, Mexico	Collect Call From 903-386-4640
October 27, 1970	Tijuana, Mexico	903-386-4640
November 6, 1970	Tijuana, Mexico	903-386-4640
November 7, 1970	Culiacan, Mexico	2-0382
November 8, 1970	Culiacan, Mexico	Collect Call From 2-1117
November 9, 1970	Tijuana, Mexico	903-386-4640
November 9, 1970	Tijuana, Mexico	903-386-4640
November 10, 1970	Tijuana, Mexico	903-386-4640
November 10, 1970	Tijuana, Mexico	903-386-4640
November 10, 1970	Tijuana, Mexico	903-386-4640
November 14, 1970	Culiacan, Mexico	2-1117
November 16, 1970	Culiacan, Mexico	2-0382
November 17, 1970	Culiacan, Mexico	2-1117
November 18, 1970	Tijuana, Mexico	903-386-4640
November 19, 1970	Tijuana, Mexico	Collect Call From 903-386-4641
November 19, 1970	Tijuana, Mexico	903-386-4641
November 19, 1970	Tijuana, Mexico	903-386-4641
November 20, 1970	Tijuana, Mexico	903-386-4641
November 27, 1970	Culiacan, Mexico	2-0382
November 28, 1970	Culiacan, Mexico	2-0382

<u>DATE</u>	<u>AREA CALLED</u>	<u>NUMBER CALLED</u>
December 1, 1970	Tijuana, Mexico	903-386-4641
December 1, 1970	Tijuana, Mexico	903-386-4641
December 1, 1970	Culiacan, Mexico	2-0382
December 2, 1970	Tijuana, Mexico	903-386-4641
December 2, 1970	Tijuana, Mexico	903-386-4641
December 3, 1970	Tijuana, Mexico	903-386-4641
December 3, 1970	Tijuana, Mexico	903-386-4641
December 4, 1970	Tijuana, Mexico	903-386-4641
December 4, 1970	Tijuana, Mexico	903-386-4641
December 6, 1970	Tijuana, Mexico	903-386-4641
December 6, 1970	Culiacan, Mexico	2-0382
December 7, 1970	Culiacan, Mexico	2-0382
December 15, 1970	Culiacan, Mexico	2-0382
December 16, 1970	Tijuana, Mexico	903-386-4641
Number 415-489-0869 Changed to 415-489-0505 January 1, 1971		
January 7, 1971	Tijuana, Mexico	903-386-4641
January 7, 1971	Tijuana, Mexico	903-386-4641

## APPENDIX A-2

Chronological list of long distance telephone traffic between telephone 415-656-7173, subscribed to in the name of Umberto Jose Chavez and located at 220 Carmelita Place, Fremont, California, and Mexico, for the period December 18, 1970 to February 5, 1971.

Number 415-656-7173 In Service as of December 18, 1970

<u>DATE</u>	<u>AREA CALLED</u>	<u>NUMBER CALLED</u>
December 18, 1970	Tijuana, Mexico	903-386-4641
December 18, 1970	Tijuana, Mexico	903-386-4641
December 29, 1970	Tijuana, Mexico	903-385-6208 (Called From Union City, Billed To 415-656-7173)
January 7, 1971	Tijuana, Mexico	903-3864641
January 7, 1970	Culiacan, Mexico	2-0382
January 9, 1971	Tijuana, Mexico	903-386-4641
January 10, 1971	Tijuana, Mexico	903-386-4641
January 10, 1971	Tijuana, Mexico	903-386-4641
January 27, 1971	Tijuana, Mexico	903-386-4641
January 27, 1971	Tijuana, Mexico	903-386-4641
January 28, 1971	Tijuana, Mexico	903-386-4641
January 28, 1971	Tijuana, Mexico	903-386-4641
January 29, 1971	Tijuana, Mexico	903-386-4641
January 20, 1971	Tijuana, Mexico	903-386-4641
January 30, 1971	Tijuana, Mexico	903-386-4641

## APPENDIX B-1

Monthly summary of long distance telephone traffic between telephone 415-471-1193, changed to 415-471-4288, changed to 415-489-0869, changed to, and presently 415-489-0505, subscribed to in the name of Florentino Chavez and located at 33642 7th Street, Union City, California, and Mexico

February 1970	—5 calls to Tijuana, Mexico 903-385-5054
March 1970	—8 calls to Tijuana, Mexico 903-385-5054 2 calls to Tijuana, Mexico 903-386-4640 1 call collect from Tijuana, Mexico 903-386-4640 1 call to Tijuana, Mexico 903-385-5054
April 1970	—1 call to Tijuana, Mexico 903-385-5054 5 calls to Tijuana, Mexico 903-386-4640 1 call collect from Mexico
May 1970	—5 calls to Tijuana, Mexico 903-386-4640
June 1970	—6 calls to Tijuana, Mexico 903-386-4640 1 call to Culiacan, Mexico 2-0382 1 call collect from Tijuana, Mexico 903-385-5054
July 1970	—7 calls to Tijuana, Mexico 903-385-5054 7 calls to Tijuana, Mexico 903-386-4640 3 calls collect from Tijuana, Mexico 903-386-4640 2 calls collect from Tijuana, Mexico 903-385-2267
August 1970	—7 calls to Tijuana, Mexico 903-386-4640 6 calls to Tijuana, Mexico 903-385-5054 1 call to Culiacan, Mexico 2-0382
September 1970	—3 calls to Tijuana, Mexico 903-386-4640 1 call to Culiacan, Mexico 2-1117 1 call collect from Tijuana, Mexico 903-386-4640

October 1970 — 7 calls to Tijuana, Mexico 903-386-4640  
3 calls to Tijuana, Mexico 903-385-6208  
2 calls to Culiacan, Mexico 2-1117  
1 call collect from Tijuana, Mexico 903-386-4640

November 1970 — 8 calls to Tijuana, Mexico 903-386-4640  
4 calls to Culiacan, Mexico 2-0382  
3 calls to Tijuana, Mexico 903-386-4641  
2 calls to Culiacan, Mexico 2-1117  
1 call collect from Tijuana, Mexico 903-386-4641  
1 call collect from Culiacan, Mexico 2-1117

December 1970 — 10 calls to Tijuana, Mexico 903-386-4641  
4 calls to Culiacan, Mexico 2-0382

January 1971 — 2 calls to Tijuana, Mexico 903-386-4641

#### APPENDIX B-2

Monthly summary of specific long distance telephone traffic between telephone 415-656-7173, subscribed to in the name of Umberto Jose Chavez, and located at 220 Carmelita Place, Fremont, California, and Mexico.

December 1970 — 2 calls to Tijuana, Mexico 903-386-4641  
1 call to Tijuana, Mexico 903-385-6208  
(Called from Union City, California, billed to 415-656-7173)

January 1971 — 11 calls to Tijuana, Mexico 903-386-4641  
1 call to Culiacan, Mexico 2-0382

## APPENDIX C-1

Summary of long distance telephone traffic between telephone 415-471-1193, changed to 415-471-4288, changed to 415-489-0869, changed to, and presently 415-489-0505, subscribed to in the name of Florentino Chavez, located at 33642 7th Street, Union City, California, and Mexico, for the period February 11, 1970 to February 5, 1971.

- |                                                     |                                                                 |
|-----------------------------------------------------|-----------------------------------------------------------------|
| 903-385-5054                                        | —27 telephone calls to Tijuana, Mexico<br>903-385-5054          |
|                                                     | 1 collect telephone call from Tijuana,<br>Mexico 903-385-5054   |
| 903-386-4640                                        | —50 telephone calls to Tijuana, Mexico<br>903-386-4640          |
|                                                     | 6 collect telephone calls from Tijuana,<br>Mexico 903-386-4640  |
| 903-386-4641                                        | —15 telephone calls to Tijuana, Mexico<br>903-386-4641          |
|                                                     | 1 collect telephone call from Tijuana,<br>Mexico 903-386-4641   |
| 903-385-2267                                        | —2 collect telephone calls from Tijuana,<br>Mexico 903-385-2267 |
| 2-0382                                              | —10 telephone calls to Culiacan, Mexico<br>2-0382               |
| 2-1117                                              | —5 telephone calls to Culiacan, Mexico<br>2-1117                |
|                                                     | 1 collect telephone call from Culiacan,<br>Mexico 2-1117        |
| 903-385-6208                                        | —3 telephone calls to Tijuana, Mexico<br>903-385-6208           |
| Unknown Number—1 collect telephone call from Mexico |                                                                 |

## APPENDIX C-2

Summary of long distance telephone traffic between telephone 415-656-7173, subscribed to in the name of Umberto Jose Chavez and located at 220 Carmelita Place, Fremont, California, and Mexico, for the period December 18, 1970 to February 5, 1971.

- |              |                                                                              |
|--------------|------------------------------------------------------------------------------|
| 903-386-4641 | —13 telephone calls to Tijuana, Mexico                                       |
|              | 903-386-4641                                                                 |
| 2-0382       | —1 telephone call to Culiacan, Mexico                                        |
|              | 2-0382                                                                       |
| 903-385-6208 | —1 telephone call to Tijuana, Mexico                                         |
|              | 903-385-6208 (Called from Union City,<br>California, billed to 415-656-7173) |

## APPENDIX D-1

Chronological list of collect telephone calls from unknown pay telephones in San Ysidro, Chula Vista and San Diego, California, to telephone 415-471-1193, changed to 415-471-4288, changed to and presently 415-489-0505, subscribed to in the name of Florentino Chavez, and located at 38642 7th Street, Union City, California, for the period February 9, 1970 to February 5, 1971.

Number 415-471-1193 In Service

<u>Date</u>	<u>Collect Telephone Call Received From</u>
February 9, 1970	San Ysidro, California
February 11, 1970	San Ysidro, California
February 14, 1970	San Ysidro, California
February 16, 1970	San Ysidro, California
April 21, 1971	San Ysidro, California
April 22, 1970	San Ysidro, California
April 27, 1970	San Ysidro, California
May 15, 1970	San Ysidro, California
May 15, 1970	San Ysidro, California
June 1, 1970	San Ysidro, California
June 11, 1970	San Ysidro, California
June 18, 1970	San Ysidro, California
June 20, 1970	San Ysidro, California
June 25, 1970	San Ysidro, California
July 1, 1970	San Ysidro, California
July 4, 1970	Chula Vista, California
July 10, 1970	San Ysidro, California
July 11, 1970	San Ysidro, California
Number 415-471-1193 Changed to 415-471-4288 on July 13, 1970	
July 26, 1970	Chula Vista, California
July 26, 1970	Chula Vista, California
July 27, 1970	San Ysidro, California

<u>Date</u>	<u>Collect Telephone Call Received From</u>
August 3, 1970	San Ysidro, California
August 7, 1970	Chula Vista, California
August 10, 1970	San Ysidro, California
August 14, 1970	Chula Vista, California
August 17, 1970	San Ysidro, California
August 19, 1970	San Ysidro, California
August 27, 1970	San Ysidro, California
August 28, 1970	Chula Vista, California
August 31, 1970	San Ysidro, California
September 11, 1970	Chula Vista, California
Number 415-471-4288 Changed to 415-489-0869 on September 17, 1970	
September 24, 1970	San Ysidro, California
October 1, 1970	San Ysidro, California
October 1, 1970	San Ysidro, California
October 7, 1970	Chula Vista, California
October 13, 1970	San Ysidro, California
October 13, 1970	San Diego, California
October 14, 1970	San Ysidro, California
October 14, 1970	San Ysidro, California
October 14, 1970	San Ysidro, California
October 28, 1970	San Ysidro, California
October 31, 1970	San Ysidro, California
November 4, 1970	Chula Vista, California
November 6, 1970	San Ysidro, California
November 7, 1970	San Ysidro, California
November 10, 1970	San Ysidro, California
November 16, 1970	San Ysidro, California
December 5, 1970	San Ysidro, California
Number 415-489-0869 Changed to 415-489-5050 on January 4, 1971	

## APPENDIX D-2

Chronological list of collect telephone calls from unknown pay telephones in San Ysidro, Chula Vista and San Diego, California, to telephone 415-656-7173, subscribed to in the name of Umberto Jose Chazev, and located at 220 Carmelita Place, Fremont, California, for the period December 18, 1970, to February 5, 1971.

Number 415-656-7173 In Service as of December 18, 1970

<u>Date</u>	<u>Collect Telephone Call Received From</u>
January 1, 1971	San Ysidro, California
January 4, 1971	San Ysidro, California
January 6, 1971	San Ysidro, California
January 11, 1971	San Ysidro, California
January 11, 1971	San Ysidro, California
January 14, 1971	San Ysidro, California
January 16, 1971	San Ysidro, California
January 25, 1971	San Ysidro, California
January 29, 1971	San Ysidro, California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. 5

IN THE MATTER OF THE APPLICATION OF THE UNITED  
STATES OF AMERICA FOR AN ORDER AUTHORIZING THE  
INTERCEPTION OF WIRE COMMUNICATIONS

ORDER AUTHORIZING THE INTERCEPTION  
OF WIRE COMMUNICATIONS

TO: Special Agents of the Bureau of Narcotics and Dangerous Drugs and Special Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury.

Application under oath having been made before me by Maurice K. Merten, an attorney of the Organized Crime and Racketeering Section of the United States Department of Justice, and an "investigative or law enforcement officer" as defined in Section 2510(7) of Title 18, United States Code, for an order authorizing the interception of wire communications pursuant to Section 2510 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

A. There is probable cause to believe that Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, have committed and are committing offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704(a) and 7237(a) of Title 26, United States Code.

B. There is probable cause to believe that wire communications of Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, concerning these offenses will be obtained through their interception, authorization for which is herein applied. In particular, these wire communications will concern:

1. The placing of orders by Umberto Jose Chavez to Jose Ybarra-Rivera, and others as yet unknown outside the United States, for large quantities of heroin to be illegally imported into the United States.

2. The communications between Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown both inside and outside the United States, through which a system of couriers transporting heroin from the United States-Mexican border to Northern California is coordinated.

3. The communications between Umberto Jose Chavez and Lionel Medina Costilla, and others as yet unknown within the State of California, concerning the distribution, to a large geographical area of Northern California, of large quantities of heroin, illegally imported into the United States from Mexico.

C. Normal investigative procedures reasonably appear unlikely to succeed if tried.

D. There is probable cause to believe telephone 415-656-7173, subscribed to in the name of Umberto Jose Chavez, and located at 220 Carmelita Place, Fremont, California, has been used and is being used by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, in connection with the offenses described in paragraph (A) above.

WHEREFORE, it is hereby ordered that:

Special Agents of the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice and Special Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury, are authorized, pursuant to the application authorized by the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, who has been specially designated in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

1) Intercept wire communications of Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and

others as yet unknown, concerning the above described offenses to and from telephone 415-656-7173, subscribed to in the name of Umberto Jose Chavez and located at 220 Carmelita Place, Fremont, California.

2) Not automatically terminate the interception when the described type of communications sought are first obtained, but that this authority to intercept continue for a reasonable time thereafter, not to exceed a total of twenty (20) days from the date of the Order, which will reveal the manner in which Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Riviera, and others as yet unknown, illegally import, receive, transport, conceal, distribute, and sell narcotic drugs not in or from the original stamped package, and conspire to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704(a) and 7287(a) of Title 26, United States Code, and which will reveal the identity of their confederates, their places of operation, and the nature of the conspiracy involved therein.

PROVIDING THAT, this authorization to intercept wire communications shall be executed as soon as practicable after the signing of this Order, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 110 of Title 18, United States Code, and shall terminate upon obtainment of the authorized objective, or in any event, at the end of twenty (20) days from the date of this Order.

It is further ordered, upon request of the applicant, that the Pacific Telephone and Telegraph Company, a communications common carrier as defined in Section 2510(10) of Title 18, United States Code, shall forthwith furnish the Applicant and the Bureau of Narcotics and Dangerous Drugs all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the persons whose communications are to be intercepted. The furnishing of such facilities or technical assistance by

the Pacific Telephone and Telegraph Company to be compensated for by the Applicant or the Bureau of Narcotics and Dangerous Drugs, Department of Justice, at the prevailing rates.

PROVIDING ALSO, that Maurice K. Merten shall provide the Court with a report on the 5th, 10th, and 15th days following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continued interception:

/s/ Oliver J. Carter  
United States District Judge

This 18 day of February, 1971 at 10:10 O'Clock A.M.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE APPLICATION OF THE UNITED  
STATES OF AMERICA FOR AN ORDER AUTHORIZING THE  
USE OF PEN REGISTERS OR TOUCH TONE DECODERS

ORDER AUTHORIZING THE USE OF PEN  
REGISTERS OR TOUCH TONE DECODERS

TO: Special Agents of the Bureau of Narcotics and Dangerous Drugs and Special Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury.

Affidavit under oath having been made before me by Julius Beretta, Special Agent of the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, and full consideration having been given to the matters set forth therein, the Court finds:

A. There is probable cause to believe that Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown have committed and are committing offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704(a) and 7237(a) of Title 26, United States Code.

B. There is probable cause to believe telephone number 415-656-7173, subscribed to in the name of Umberto Jose Chavez, and located at 220 Carmelita Place, Fremont, California has been used and is being used by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown, in connection with the offenses described in (A)

WHEREFORE, it is hereby ordered that:

Special Agents of the Bureau of Narcotics and Dangerous Drugs, and Special Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury, are authorized to:

A. Install mechanical devices on telephone number 415-656-7173, subscribed to in the name of Umberto Jose Chavez, and located at 220 Carmelita Place, Fremont, California, which will reveal the telephone numbers of all outgoing calls dialed from the above described telephone.

B. Continue use of such mechanical devices in operation until the telephone numbers of all outgoing calls dialed lead to the identities of the confederates of the conspiracy involving the importation and distribution of illegal narcotics, and their places of operation, for a period of twenty (20) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this authorization to install and operate the above described mechanical devices must terminate upon attainment of the authorized objective or, in the event, at the end of twenty (20) days from the date of this Order.

/s/ Oliver J. Carter  
United States District Judge

February 18, 1971

DATE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. 6

IN THE MATTER OF THE APPLICATION OF THE UNITED  
STATES OF AMERICA FOR AN ORDER AUTHORIZING THE  
INTERCEPTION OF WIRE COMMUNICATIONS

APPLICATION

Maurice K. Merten, an Attorney of the Organized Crime and Racketeering Section, San Francisco Strike Force, United States Department of Justice, being duly sworn states:

- 1) This sworn application is submitted in support of an Order authorizing the interception of wire communications. This application has been submitted only after lengthy discussions concerning the necessity for such application with various officials of the Organized Crime and Racketeering Section, United States Department of Justice, Washington, D. C., together with Agents of the Bureau of Narcotics and Dangerous Drugs.
- 2) He is an "investigative or law enforcement officer —of the United States" within the meaning of Section 2510 (7) of Title 18, United States Code, that is—he is an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.
- 3) Pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable John N. Mitchell, has specially designated in the proceeding the Assistant Attorney General for the Criminal Division of the United States Department of Justice, The Honorable Will Wilson, to authorize affiant to make this application for an Order authorizing the interception of wire communications. This letter or authorization signed by the Assistant Attorney General is attached to this application as Exhibit A.

4) This application seeks authorization to intercept wire communications of "Pelone", "Jim", "Jessee", "Mondo", "Olivia", and others as yet unknown, concerning the offenses enumerated in Section 2516 of Title 18, United States Code; offenses involving the illegal importation, receipt, transportation, concealment, distribution and sale of narcotic drugs not in or from the original stamped package, and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code, which have been committed and are being committed by "Pelone", "Jim", "Jessee", and "Mondo", "Olivia", and others as yet unknown.

5) He has discussed all the circumstances of the above offenses with Special Agent Julius Beretta of the San Francisco, California, office of the Bureau of Narcotics and Dangerous Drugs, who has directed and conducted the investigation herein, and has examined the affidavit of Special Agent Julius Beretta (attached to this application as Exhibit B and incorporated by reference herein) which alleges facts therein in order to show that:

a. There is probable cause to believe that "Pelone", "Jim", "Jessee", "Mondo", "Olivia, and others as yet unknown have committed and are committing offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code.

b. There is probable cause to believe that the wire communications of "Pelone", "Jim", "Jessee", "Mondo", "Olivia", and others as yet unknown, concerning these offenses will be obtained through their interception, authorization for which is herein applied. In particular, these wire communications will concern:

(1) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the availability of heroin illegally

imported from Mexico to the United States and transported to Northern California.

(2) The communications between "Pelone", "Jim", "Jessee", "Mondo", "Olivia", and others as yet unknown relative to the overall operation of an organization illegally importing and distributing heroin.

(3) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the method and scope of distribution of heroin throughout Northern California.

(4) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the place of storage of heroin illegally imported into the United States from Mexico.

(5) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the number and identity of the sellers of the heroin illegally imported into the United States by these individuals and others.

c. Normal investigative procedures reasonably appear unlikely to succeed.

d. There is probable cause to believe that telephone number 415-471-7260 subscribed to in the name of James Fernandez and located at 1345 G Street, Union City, California, has been used and is being used by "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, in connection with the offenses described in 5(a) above.

6) By Court Order dated February 18, 1971, the Honorable Oliver J. Carter, Chief Judge, United States Department of Justice, Northern District of California, authorized the interception of wire communications of Umberto Jose Chavez, Lionel Medina Costilla, and Jose Ybarra-Rivera, from telephone number 415-656-7173 for a maximum of twenty (20) days. Wire communications have been intercepted from the above-mentioned telephone from February 18, 1971 up to, and including, the date of this application. Other than the application made in support of the Order referred to in this paragraph, no other application has been made to any Judge for authorization to intercept or for approval of the intercep-

tion of wire or oral communications involving the same persons, facility or place specified herein.

WHEREFORE, your affiant believes that probable cause exists to believe that "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, are engaged in the commission of offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code, and that telephone number 415-471-7260, subscribed to in the name of James Fernandez and located at 1845 G Street, Union City, California, has been used and is being used by "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, in connection with the offenses described in 5 (a) above, and that communications of "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, concerning these offenses will be intercepted to and from the above described telephone and that normal investigative procedures reasonably appear unlikely to succeed.

On the basis of the allegations contained in this application and upon the basis of the affidavit of Special Agent Julius Beretta, Bureau of Narcotics and Dangerous Drugs, which is attached hereto and made a part thereof, affiant requests this Court to issue an Order pursuant to the power conferred on it by Section 2518 of Title 18, United States Code, authorizing Special Agents of the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice, and Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury, to intercept wire communications to and from the above described telephone until communications are intercepted which reveal the manner in which "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others yet unknown, illegally import, receive, transport, conceal, distribute, and sell narcotic drugs not in or from the original stamped package and conspire to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704 (a)

and 7237 (a) of Title 26, United States Code, and which reveal the identity of their confederates, their places of operation and the nature of the conspiracy involved therein, for a period of twenty (20) days from the date of this Order, whichever is earlier.

The affiant also requests that the Court direct that the Pacific Telephone and Telegraph Company, a communications common carrier as defined in Section 2510 (10) of Title 18, United States Code, shall forthwith furnish the applicant and the Bureau of Narcotics and Dangerous Drugs all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the persons whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the Pacific Telephone and Telegraph Company to be compensated for by the applicant or the Bureau of Narcotics and Dangerous Drugs at the prevailing rates.

MAURICE K. MERTEN  
Attorney  
Department of Justice  
San Francisco, California

Subscribed and sworn before me this day of  
January 1971.

**United States District Judge**

Assistant Attorney General  
Criminal Division

## DEPARTMENT OF JUSTICE

Washington 20530

Feb. 25, 1971

Mr. Maurice Merten  
Special Attorney  
San Francisco Strike Force  
San Francisco, California

Dear Mr. Merten:

This is with regard to your request for authorization to make application pursuant to the provisions of Section 2518 of Title 18, United States Code, for an Order of the Court authorizing the Federal Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, United States Department of the Treasury, to intercept wire communications to and from telephone number 415-471-7260, located at 1345 G Street, Union City, California, in connection with the investigation into possible violations of Sections 174, 4704(a) and 7237(a) of Titles 21 and 26, respectively, United States Code, by persons identified only as "Pelone," "Jim," "Jesse," "Mondo," "Olivia" and others as yet unknown.

I have reviewed your request and the facts and circumstances detailed therein and have determined that probable cause exists to believe that persons identified only as "Pelone," "Jim," "Jesse," "Mondo," "Olivia" and others as yet unknown have committed, are committing, or are about to commit offenses enumerated in Section 2516 of Title 18, United States Code, to wit: violations of Sections 174, 4704(a) and 7237(a), of Titles 21 and 26, respectively, United States Code. I have further determined that there exists probable cause to believe that the above persons make use of the described facility in connection with those offenses, that wire communications concerning the offenses will be intercepted, and that nor-

mal investigative procedures reasonably appear to be unlikely to succeed if tried.

Accordingly, you are hereby authorized under the power specially delegated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, to make application to a judge of competent jurisdiction for an Order of the Court pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, United States Department of the Treasury, to intercept wire communications from the facility described above, for a period of twenty (20) days.

Sincerely,

/s/ Will Wilson  
**WILL WILSON**  
Assistant Attorney General

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. 6

IN THE MATTER OF THE APPLICATION OF THE UNITED  
STATES OF AMERICA FOR AN ORDER AUTHORIZING THE  
INTERCEPTION OF WIRE COMMUNICATIONS

## AFFIDAVIT IN SUPPORT OF APPLICATION

Julius Beretta, Special Agent, San Francisco Office, Bureau of Narcotics and Dangerous Drugs, Department of Justice, being duly sworn, states:

1. I am a Special Agent of the Bureau of Narcotics and Dangerous Drugs. I have been so employed for two and one half years and have been assigned to the Bureau of Narcotics and Dangerous Drugs, San Francisco, California, Office, for that same period. I am an "investigative or law enforcement officer—of the United States" within the meaning of Section 2510 (7) of Title 18, United States Code, that is—I am an officer of the United States who is authorized by law to conduct investigations of and to make arrests for offenses enumerated in Section 2516, Title 18, United States Code.

2. This affidavit seeks authorization to intercept wire communications to and from telephone number 415-471-7260 subscribed to in the name of James Fernandez, 1345 G Street, Union City, California, in connection with the commission of certain offenses enumerated by Section 2516 of Title 18, United States Code, that is, offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code, which have been committed and are being committed by the individuals known as "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown.

3. By Court Order dated February 18, 1971, the Honorable Oliver J. Carter, Chief Judge, United States Department of Justice, Northern District of California, authorized the interception of wire communications of Umberto Jose Chavez, Lionel Medina Costilla, and Jose Ybarra-Rivera, from telephone number 415-656-7173 for a maximum period of twenty (20) days. Wire communications have been intercepted from the above-mentioned telephone during the period February 18, 1971 up to and including the date of this affidavit. Other than the application made in support of the Order referred to in this paragraph, no other application has been made to any Judge for authorization to intercept or for approval of the interception of wire or oral communications involving any of the same persons, facility, or place specified herein. Attached hereto as Exhibit A and made a part thereof is the affidavit made in support of the Order authorizing the interception of wire communications from telephone 415-656-7173 referred to above. As a result of my personal participation in the implementation of Judge Carter's order of February 18, 1971, and my reference to logs of the interceptions made pursuant to that order, I am familiar with all of the circumstances of the offenses. On the basis of that familiarity, I allege the following paragraphs show that:

- (a) There is probable cause to believe that persons identified only as "Pelone", "Jim", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, have committed and are committing offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code.
- (b) There is probable cause to believe that wire communications of the individuals known only as "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, concerning these offenses will be obtained through their interception, authorization

for which is herein applied. In particular, these wire communications will concern:

- (1) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the availability of heroin illegally imported from Mexico to the United States and transported to Northern California.
  - (2) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown relative to the overall operation of an organization illegally importing and distributing heroin.
  - (3) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the method and scope of distribution of heroin throughout Northern California.
  - (4) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the place of storage of heroin illegally imported into the United States from Mexico.
  - (5) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the number and identity of the sellers of the heroin illegally imported into the United States by these individuals and others.
- (c) Normal investigative procedures reasonably appear unlikely to succeed.
- (d) There is probable cause to believe that telephone number 415-471-7260 subscribed to in the name of James Fernandez and located at 1345 G Street, Union City, California, has been used and is being used by "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, in connection with the offenses described in (a) above.

## FACTS AND CIRCUMSTANCES

PROBABLE CAUSE TO BELIEVE THAT "JIM" IS UTILIZING TELEPHONE NUMBER 415-471-7260 IN CONNECTION WITH COMMISSION OF OFFENSES INVOLVING THE ILLEGAL IMPORTATION, RECEIPT, TRANSPORTATION, CONCEALMENT, DISTRIBUTION, AND SALE OF NARCOTIC DRUGS NOT IN OR FROM THE ORIGINAL STAMPED PACKAGE IN VIOLATION OF SECTION 174, TITLE 21, UNITED STATES CODE AND SECTIONS 4704 (a) AND 7237 (a) OF TITLE 26, UNITED STATES CODE.

4. Telephone number 415-471-7260 is subscribed to by James Fernandez, and located at 1345 G Street, Union City, California.

5. The logs of telephone number 415-656-7173 disclose that:

(a) On February 19, 1971 at 8:07 p.m. a female called 471-7260 and asked for "Jim". A male identified as "Pelone" then replaced the female on telephone 415-656-7173 and spoke to the male who identified himself as "Jim". "Pelone" instructed "Jim" to break down \$50,000.00 by five's, ten's, and twenty's and put it where they put it before they go down.

(b) On February 19, 1971 at 8:10 p.m. a male called 471-7260 and instructed the male answering to call "Louie" and tell him to only take money.

(c) On February 21, 1971 at 3:30 p.m. a male called 471-7260 and told the male answering that he wanted "five fifties" and to deliver them to the usual place.

6. Based upon my experience as a Special Agent of the Bureau of Narcotics and Dangerous Drugs and my familiarity with the investigation of Umberto Jose Chavez and his organization, a usual quantity of packaging of heroin is in prophylactics with the value of \$50.00 and that "pieces" refers to ounces of heroin.

7. The logs of telephone number 415-656-7173 further disclose that:

- (a) On February 21, 1971 at 9:17 p.m. a male called 471-7260 and the male answering told the male calling that he had "picked it up from Louie" and "gave Mondo the 93; plus the 5 you took makes 98".
  - (b) On February 21, 1971 at 9:20 p.m. a male called 489-0620 and asked a male identified as "Mondo" if he received the things, and told him it would have to hold him for a few days but there would be more coming.
  - (c) On February 21, 1971 at 10:36 p.m. a female called 886-9288 and after the female answering complained that she had only received 14 "pieces" instead of 15 "pieces" from "Jim", the female caller related that she would only have to pay what "Jim" wrote in his book.
  - (d) On February 22, 1971 at 8:41 a.m. a female called 471-7260 and told the female answering that if anyone calls to see "Louie", tell them to go see "Mondo".
  - (e) On February 22, 1971 at 2:09 p.m. a male called 471-7260 and asked the male identified as "Jim" if he was ready to go. "Jim" replied that he was getting ready to call and would call back.
  - (f) On February 22, 1971 at 2:16 p.m. a male identified as "Jim" called 415-656-7173 and told the male answering that he (Jim) is supposed to leave at four and has to be there thirty minutes early. A meeting was then set between the two where money was to be exchanged. The location of the place was identified as the dump and the time of the meeting was 3:00 p.m.
8. On February 22, 1971 at approximately 3:00 p.m. I observed a male known to me as Jim Fernandez arrive at the Union City dump. Special Agent Art Johnson,

Bureau of Narcotics and Dangerous Drugs, an agent on surveillance at the Union City dump advised me that on the above date at shortly after 3:00 p.m. he observed a male known to him as Umberto Jose Chavez arrive at that location and meet with Jim Fernandez. Following this meeting I followed Jim Fernandez to the Oakland International Airport where he boarded a plane destined for San Diego, California.

**NORMAL INVESTIGATIVE PROCEDURES  
REASONABLY APPEAR UNLIKELY TO SUCCEED.**

9. The logs of telephone 415-656-7173 further disclose that:

- (a) On February 22, 1971, at 6:42 p.m. a female called 415-656-7173 and told a male identified as "Pelone" that when a third person left, that third person took the key to the place where the "chiva" was kept and she could not get any out. Further discussions revealed the female caller had present access to a small amount of "chiva." "Pelone," after instructing the female caller concerning that available, told her to call him again.
- (b) On February 22, 1971, at 7:36 p.m., a female called 415-656-7173 and told a male identified as "Pelone" that she was able to open the suitcase. A sale price was then discussed.

10. I have been advised by Anthony A. Selaya, Special Agent, Bureau of Narcotics and Dangerous Drugs, who is fluent in Spanish, that "chiva" is the vernacular for heroin. Agent Celaya has also advised me that he has listened to conversations placed from telephone 415-656-7173 to 415-471-7260 and that from his familiarity with the voice of the female who often answers 415-471-7260, the female referred to in 9 (a) and (b) above is the same female who often answers telephone 415-471-7260.

11. Based upon my knowledge as a Special Agent of the Bureau of Narcotics and Dangerous Drugs of narcotics cases, and my association with other Special Agents

who have conducted investigations of illegal narcotics traffic, normal investigative procedures appear unlikely to succeed in establishing:

- (a) That "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown are involved in illegal narcotic activities in violation of Federal laws;

(b) The full extent of this conspiracy to import and distribute the illegal narcotics imported from Mexico and transported to Northern California; and

(c) The identity of the co-conspirators, aiders and abettors of the organization illegally importing and distributing heroin.

12. The house located at 1345 G Street, Union City, California is located in a predominantly Mexican-American area in which other members of this organization reside. Consequently surveillance is practically impossible since Government vehicles and agents can be readily identified.

13. My experience and the experiences of other Special Agents of the Bureau of Narcotics and Dangerous Drugs has shown that individuals dealing in large quantities of narcotics are particularly covert in their activities and wary of surveillance by law enforcement personnel.

14. At this time there is no known undercover access to Jim Fernandez.

15. For the reasons set out here and above, all normal avenues of investigation are closed and it is my belief that the only reasonable way to twenty (20) days from the date of the Order, whichever is earlier.

**JULIUS BERETTA**  
Special Agent, Bureau of  
Narcotics and Dangerous  
Drugs  
San Francisco,  
California Office

Subscribed and sworn to before me this day of  
January 1971.

## **United States District Judge**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. 6

IN THE MATTER OF THE APPLICATION OF THE UNITED  
STATES OF AMERICA FOR AN ORDER AUTHORIZING THE  
INTERCEPTION OF WIRE COMMUNICATIONS

ORDER AUTHORIZING THE INTERCEPTION  
OF WIRE COMMUNICATIONS

TO: Special Agents of the Bureau of Narcotics and Dangerous Drugs and Special Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury.

Application under oath having been made before me by Maurice K. Merten, an attorney of the Organized Crime and Racketeering Section of the United States Department of Justice, and an "investigative or law enforcement officer" as defined in Section 2510 (7) of Title 18, United States Code, for an order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

a. There is probable cause to believe that "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, have committed and are committing offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code.

b. There is probable cause to believe that wire communications of "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, concerning these offenses will be obtained through their interception, authorization for which is herein applied. In particular, these wire communications will concern:

(1) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the availability of heroin illegally imported from Mexico to the United States and transported to Northern California.

(2) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown relative to the overall operation of an organization illegally importing and distributing heroin.

(3) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the method and scope of distribution of heroin throughout Northern California.

(4) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the place of storage of heroin illegally imported into the United States from Mexico.

(5) The communications between "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown concerning the number and identity of the sellers of the heroin illegally imported into the United States by these individuals and others.

c. Normal investigative procedures reasonably appear unlikely to succeed.

d. There is probable cause to believe that telephone number 415-471-7260 subscribed to in the name of James Fernandez and located at 1345 G Street, Union City, California, has been used and is being used by "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, in connection with the offenses described in (a) above.

WHEREFORE, it is hereby ordered that:

Special Agents of the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice and Special Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury, are authorized, pursuant to the application authorized by the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, who has been specially designated in

this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(1) Intercept wire communications of "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, concerning the above described offenses to and from telephone 415-471-7260, subscribed to in the name of James Fernandez and located at 1345 G Street, Union City, California.

(2) Not automatically terminate the interception when the described type of communications sought are first obtained, but that this authority to intercept continue for a reasonable time thereafter, not to exceed a total of twenty (20) days from the date of the Order, which will reveal the manner in which "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, illegally import, receive, transport, conceal, distribute, and sell narcotic drugs not in or from the original stamped package, and conspire to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code, and which will reveal the identity of their confederates, their places of operation, and the nature of the conspiracy involved therein.

PROVIDING THAT, this authorization to intercept wire communications shall be executed as soon as practicable after the signing of this Order, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and shall terminate upon obtainment of the authorized objective, or in any event, at the end of twenty (20) days from the date of this Order.

It is further ordered, upon request of the applicant, that the Pacific Telephone and Telegraph Company, a communications common carrier as defined in Section 2510 (10) of Title 18, United States Code, shall forthwith furnish the Applicant and the Bureau of Narcotics and Dangerous Drugs all information, facilities, and technical assistance necessary to accomplish the interception

unobtrusively and with a minimum of interference with the services that such carrier is according the persons whose communications are to be intercepted.

\* \* \* \*

the furnishing of such facilities or technical assistance by the Pacific Telephone and Telegraph Company to be compensated for by the Applicant or the Bureau of Narcotics and Dangerous Drugs, Department of Justice, at the prevailing rates.

PROVIDING ALSO, that Maurice K. Merten shall provide the Court with a report on the 5th, 10th, and 15th days following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continued interception:

/s/ Oliver J. Carter  
United States District Judge

This 25 day of February 1971 at 3:25 O'Clock P.M.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. 6

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER AUTHORIZING THE USE OF PEN REGISTERS OR TOUCH TONE DECODERS

ORDER AUTHORIZING THE USE OF PEN REGISTERS OR TOUCH TONE DECODERS

TO: Special Agents of the Bureau of Narcotics and Dangerous Drugs and Special Agents of the United States Customs Agency Service, Bureau of Customs, Department of Treasury.

Affidavit under oath having been made before me by Julius Beretta, Special Agent of the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, and full consideration having been given to the matters set forth therein, the Court finds:

a. There is probable cause to believe that "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown have committed and are committing offenses involving the illegal importation, receipt, transportation, concealment, distribution, and sale of narcotic drugs not in or from the original stamped package and a conspiracy to commit such offenses, in violation of Section 174, Title 21, United States Code, and Sections 4704 (a) and 7237 (a) of Title 26, United States Code.

b. There is probable cause to believe telephone number 415-471-7260, subscribed to in the name of James Fernandez, and located at 1345 G Street, Union City, California, has been used and is being used by "Pelone", "Jim", "Jesse", "Mondo", "Olivia", and others as yet unknown, in connection with the offenses described in (a) above.

WHEREFORE, it is hereby ordered that:

Special Agents of the Bureau of Narcotics and Dangerous Drugs, and Special Agents of the United States

Customs Agency Service, Bureau of Customs, Department of Treasury, are authorized to:

- a. Install mechanical devices on telephone number 415-471-7260, subscribed to in the name of James Fernandez, and located at 1345 G Street, Union City, California, which will reveal the telephone numbers of all outgoing calls dialed from the above described telephone.
- b. Continue use of such mechanical devices in operation until the telephone numbers of all outgoing calls dialed lead to the identities of the confederates of the conspiracy involving the importation and distribution of illegal narcotics, and their places of operation, for a period of twenty (20) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this authorization to install and operate the above described mechanical devices must terminate upon attainment of the authorized objective or, in any event, at the end of twenty (20) days from the date of this Order.

/s/ Oliver J. Carter  
United States District Judge

DATE February 25, 1971

JAMES E. RITCHIE  
Organized Crime and Racketeering Section  
U.S. Department of Justice  
450 Golden Gate Avenue, Box 36132  
San Francisco, California 94102  
(415) 556-0750

Attorney for the Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Criminal No. 71-406 SAW

UNITED STATES OF AMERICA, PLAINTIFF

v.

UMBERTO JOSE CHAVEZ,  
also known as Pelon;  
IRENE CHAVEZ;  
JAMES FERNANDEZ;  
ANN FERNANDEZ;  
OLIVIA MIRAMONTES,  
also known as Olivia Montes;  
JESSE BUSTAMANTE;  
ARMANDO RAMIREZ,  
also known as Mando;  
CARMEN RAMIREZ;  
DELORES FERNANDEZ;  
GEORGE APODACA;  
MARGARET APODACA;  
VERNON BACA;  
FILEMON MIRAMONTES;  
and  
PEDRO ARAUJO,

DEFENDANTS

VIOLATIONS:

- 21 U.S.C. 173, 174—Conspiracy to Import and Distribute Heroin.  
18 U.S.C. 1952—Interstate Travel with the Intent to Promote a Business Enterprise Involving Narcotics

## INDICTMENT

## COUNT ONE:

(Title 21, United States Code, Sections 173 and 174)

The Grand Jury Charges: THAT

From on or about the 18th day of February, 1971, the exact date being to the Grand Jury unknown, and continuing thereafter to the 27th day of February, 1971, within the Northern District of California,

UMBERTO JOSE CHAVEZ,  
also known as Pelon;  
IRENE CHAVEZ;  
JAMES FERNANDEZ;  
ANN FERNANDEZ;  
OLIVIA MIRAMONTES,  
also known as Olivia Montes;  
JESSE BUSTAMANTE;  
ARMANDO RAMIREZ,  
also known as Mando;  
CARMEN RAMIREZ;  
DELORES FERNANDEZ;  
GEORGE APODACA;  
MARGARET APODACA;  
VERNON BACA;  
FILEMON MIRAMONTES;  
and  
PEDRO ARAUJO,

the defendants herein, and an individual known only to the Grand Jury as John Doe, also known as "Louie", named herein as a co-conspirator but not as a defendant, did wilfully, knowingly and unlawfully conspire together and with divers other persons whose names are to the Grand Jury unknown, to violate Sections 173 and 174, Title 21, United States Code, by conspiring to import and bring into the United States quantities of the narcotic drug heroin contrary to law, and to receive, conceal, sell and facilitate the transportation, concealment and

sale of quantities of the narcotic drug heroin which had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law.

The Grand Jury further charges that in furtherance of the said conspiracy and to effectuate the objects thereof, the defendants committed, in the Northern District of California, the following:

*Overt Acts*

1. On February 19, 1971, Vernon Baca placed a telephone call to the residence of Umberto Jose Chavez, Fremont, California.
2. On February 22, 1971, James Fernandez departed by airplane from the Oakland International Airport, Alameda County, California.
3. On February 26, 1971, Ann Fernandez met Olivia Miramontes in the vicinity of Levine Hospital, Hayward, California.
4. On February 27, 1971, George Apodaca delivered an automobile tire to the residence located at 1167 C Street, Hayward, California.

**COUNT TWO:**

(Title 18, United States Code, Section 1952)

**The Grand Jury Further Charges: THAT**

On or about the 24th day of February, 1971, in the Northern District of California,

**UMBERTO JOSE CHAVEZ,  
also known as Pelon,**

a defendant herein, did use and cause others to use a facility in foreign commerce, to wit, a telephone, between the Northern District of California and the Republic of Mexico, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management and carrying on of an unlawful activity, that is, a business enterprise involving narcotics in violation of Sections 11500, 11500.5, and 11501 of the California Health and

Safety Code, and thereafter, UMBERTO JOSE CHAVEZ, did perform and cause to be performed acts to promote, manage, establish and carry on and facilitate the promotion, management, establishment, and carrying on of the said unlawful activity, in violation of Title 18, United States Code, Section 1952.

COUNT THREE:

(Title 18, United States Code, Section 1952)

The Grand Jury Further Charges: THAT

On or about the 22nd day of February, 1971, in the Northern District of California,

JAMES FERNANDEZ,

a defendant herein, did travel in foreign commerce between the Northern District of California and the Republic of Mexico, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management and carrying on of an unlawful activity, that is, a business enterprise involving narcotics, in violation of Sections 11500, 11500.5, and 11501 of the California Health and Safety Code, and thereafter, JAMES FERNANDEZ, did perform and cause to be performed acts to promote, manage, establish and carry on and facilitate the promotion, management, establishment, and carrying on of the said unlawful activity, in violation of Title 18, United States Code, Section 1952.

A TRUE BILL

/s/ Donald L. [Illegible]  
Foreman

/s/ James L. Browning, Jr.  
JAMES L. BROWNING, JR.  
United States Attorney

/s/ James E. Ritchie  
JAMES E. RITCHIE  
Attorney in Charge  
Organized Crime and Racketeering Section  
U.S. Department of Justice  
San Francisco, California

JAMES F. HEWITT  
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Counsel for Defendant George Apodaca

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Criminal No. 71-406 SAW

[Filed Apr. 13, 1972, C. C. Evensen, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

v.

UMBERTO CHAVEZ, ET AL., DEFENDANTS

NOTICE OF MOTION AND MOTION TO  
SUPPRESS WIRETAP EVIDENCE

TO: THE UNITED STATES ATTORNEY AND MAURICE K. MERTEN, SPECIAL ATTORNEY, DEPARTMENT OF JUSTICE:

PLEASE TAKE NOTICE that the defendants by and through their counsel on the 11th day of May 1972 at 2:15 p.m. before the Honorable Stanley A. Weigel will move this court, and do so move this court, for an order, pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure, 18 U.S.C. § 2518(10)a, and all other applicable law, suppressing the wiretap evidence and the fruits thereof.

This motion is based upon the files and records of this case, the files and records of *United States v. Eckstein, et al.*, N.D. Cal. CR-71-1531 SC, including the wiretap applications in that case, the attached memorandum of points and authorities, and any further authorities and matters which may be raised at argument or other appropriate times.

Dated: April 7, 1972

JAMES F. HEWITT  
Federal Public Defender

/s/ Earle A. Partington  
EARLE A. PARTINGTON  
Assistant Federal Public  
Defender

Submitted on behalf of and with authority from all counsel whose signatures appear upon the attached points and authorities.

JAMES F. HEWITT  
Federal Public Defender  
EARLE A. PARTINGTON  
Assistant Federal Public Defender  
450 Golden Gate Avenue, P.O. Box 36106  
San Francisco, California 94102  
Telephone: 556-7712

Counsel for Defendant George Apodaca

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Criminal No. 71-406 SAW

UNITED STATES OF AMERICA, PLAINTIFF

v.

UMBERTO CHAVEZ, ET AL., DEFENDANTS

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF DEFENDANTS' MOTION TO  
SUPPRESS THE WIRETAP EVIDENCE

- I. THE INTERCEPTIONS OF WIRE COMMUNICATIONS WERE NOT MADE IN ACCORDANCE WITH THE PROVISIONS OF 18 U.S.C. § 2516 AND 2518.

A. *The First Order* (Chavez tap)

The material relating to the tap of the Chavez phone consists of seven documents:

1. A memorandum from Attorney General John Mitchell, dated February 18, 1971, "specially designating" Assistant Attorney General Will Wilson to exercise the power to authorize Maurice Merten to apply to this Court for an order authorizing the interception of wire communications. (Appendix A1)

2. A letter of authorization, dated February 18, 1971, purportedly signed by Will Wilson, Assistant Attorney General, to the effect that Wilson had reviewed the "re-

quest and the facts and circumstances detailed therein" and concluded that "probable cause" exists to believe that named persons were violating the narcotics laws, and a further finding of probable cause to believe that they will use the described communication facility in connection with those offenses. The letter continues as follows:

Accordingly, you are hereby authorized under the power specially designated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, to make application, etc. . . .

(Appendix A2)

3. An application filed in this court in which it was stated that pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable John N. Mitchell, has specially designated in this proceeding the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, to authorize affiant to make this application for an order authorizing the interception of wire communications." (Appendix A3)

4. The affidavit in support of the application. (Appendix A4)

5. The two orders of this Court granting the application as "authorized by the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, who has been specially designated in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code." (Appendix A5)

6. The affidavit of Henry Petersen, then a Deputy Assistant Attorney General in the Criminal Division, relating to the processing of the application. His affidavit sets forth the following procedure:

a. A request for a wire interception order was made by the Narcotics Bureau;

- b. The Department file is then reviewed by an attorney in the Criminal Division, in this case Philip T. White, who recommended "favorable action" on the request;
- c. White's superior, William Lynch, approved the recommendation;
- d. The file then went to Henry Petersen who examined it and forwarded it to the Office of the Attorney General, also recommending that the authorization be granted;
- e. After approval by the "Office of the Attorney General," Henry Petersen signed Will Wilson's name to a letter (Appendix A2) authorizing the application to the court for the wiretap. Will Wilson, the "specially designated" official, never saw the file. This procedure was "standard." (Appendix A6)

7. The affidavit of Sol Lindenbaum, Executive Assistant to the Attorney General, in which Mr. Lindenbaum states:

With respect to the [Chavez tap], the Attorney General on February 18, 1971, approved the request that the authorization be given to Maurice Merten to make application for an interception order . . . Attached is a copy of the Attorney General's personally initialed memorandum of that date to Will Wilson reflecting his favorable action on the request.

(Appendix A7)

From these seven documents it is apparent that, with deference to Mr. Lindenbaum, the Attorney General's memorandum does no more than "specially designate" Will Wilson to exercise the power conferred on the Attorney General by statute to authorize Merten's application. By implication this authority could have been used to refuse authorization for the tap. And, pursuant to this "special designation" Will Wilson found "probable cause" and exercised the delegated power by his letter of February 18, 1971.

The Attorney General did not assert that he found probable cause, or that he reviewed the request, or that he had any knowledge of the case other than that approval had been recommended. His delegation of Will

Wilson was ministerial, and while he initialled the memorandum, it is significant that Sol Lindenbaum also placed the Attorney General's initials on a similar memorandum (See Appendix A7.).

These facts would bring this case within the holding of *United States v. Robinson, infra*. The government will no doubt attempt to bring this case within *United States v. La Gorga*, 336 F.Supp. 190 (W.D.Pa. 1971), wherein it was held that it made no difference if Will Wilson's name was signed by Henry Petersen where the Attorney General personally authorized the submission of an application. *La Gorga* can be distinguished from the present case in which the Attorney General did no more than designate Will Wilson to review the application. Regardless of this distinction, *La Gorga* would seem inconsistent with *Robinson*.

#### B. *The Second Order (Fernandez tap)*

The material relating to the tap of the Fernandez phone consists of seven documents:

1. A memorandum from Attorney General John Mitchell, dated February 25, 1971, "specially designating" Assistant Attorney General Will Wilson to exercise the power to authorize Maurice Merten to apply to this Court for an order authorizing the interception of wire communications. (Appendix B1).

2. A letter of authorization, dated February 25, 1971, purportedly signed by Will Wilson, Assistant Attorney General, to the effect that Wilson had reviewed the "request and the facts and circumstances detailed therein" and concluded that "probable cause" exists to believe that named persons were violating the narcotics laws, and a further finding of probable cause to believe that they will use the described communication facility in connection with those offenses. The letter continues as follows:

Accordingly, you are hereby authorized under the power specially designated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power

conferred on him by Section 2516 of Title 18, United States Code, to make application, etc. . . .

(Appendix B2)

3. An application filed in this Court in which it was stated that "pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable John N. Mitchell, has specially designated in this proceeding the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, to authorize affiant to make this application for an order authorizing the interception of wire communications." (Appendix B3)

4. The affidavits in support of the application. (Appendix B4)

5. The two orders of this Court granting the application as "authorized by the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, who has been specially designated in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code." (Appendix B5)

6. The affidavit of Sol Lindenbaum, Executive Assistant to the Attorney General, in which Mr. Lindenbaum states:

In the second instance [Fernandez tap], I reviewed the submitted material, concluded that the request satisfied the requirements of the statute and also concluded, from my knowledge of the Attorney General's actions on previous cases, that he would approve the request if submitted to him. Because the Attorney General was not available on this occasion, I approved the request pursuant to the authorization which he had given to me to act in the circumstances and caused his initials to be placed on a memorandum to Will Wilson. The memorandum approved a

request that authorization be given to Maurice Merten to make application for an interception order.

(Appendix A7)

7. The affidavit of Harold P. Shapiro, Deputy Assistant Attorney General, Criminal Division, wherein Mr. Shapiro states he signed Will Wilson's name to the letter of authorization (Appendix B2) for the application for the wiretap. (Appendix B6)

From these seven documents it can be seen that the procedure followed for approval of the Fernandez tap was similar to that used in the Chavez tap, with two major modifications:

Sol Lindenbaum placed John N. Mitchell's initials on the memorandum dated February 25, 1971, after concluding that the request satisfied the statute. Lindenbaum stated that the memorandum "approved a request that authorization be given to Maurice Merten to make application for an intenception order." Again, with deference, the memorandum *just does not say that*. It simply purports to "specially designate" Will Wilson to exercise the power to authorize the wiretap. By implication Will Wilson could have refused authorization for the tap.

Wilson's letter, stating that he has reviewed the "facts and circumstances" and finding probable cause, consistent with the designating memorandum of February 25, 1971, purported to exercise the power so delegated to him by the Attorney General. In addition, Harold Shapiro, another Deputy Assistant Attorney General, signed Will Wilson's name to the letter of February 25, 1971.

Thus it is apparent that neither the Attorney General nor his specially designated Assistant performed the important function required by the statute, that of weighing the evidence and determining whether such a gross invasion of privacy was justified in the public interest. This procedure is not in accordance with the specific mandate of Congress.

The Court of Appeals for the Fifth Circuit has recently reserved a conviction where the statutory pro-

cedures set forth in 18 U.S.C. § 2516 and 2518 were not followed (*United States v. Robinson*, decided January 12, 1972), copy of which is attached as Appendix C. The Fifth Circuit held that Congress intended to vest a "publicly responsible official subject to the political process" with the responsibility for giving his "personal attention" to such matters. This view was followed in *United States v. Cihal*, 336 F.Supp. 261 (W.D.Pa. 1972), and *United States v. Aquino*, — F.Supp. — (E.D. Mich., Jan. 17, 1972).

In the instant case, the allegation in the applications that Will Wilson, the designated official, had reviewed the requests and found probable cause was simply not true. It is not clear what the District Court would have done had it known the true circumstances, but it acted upon an assurance that a high official as required by statute had made the threshold determination to request authority to intercept these private conversations.

The enactment of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, the wiretap provisions, was not free from difficulty. Strong views were expressed on both sides of the question. 1968 U.S. Code, Congressional and Administrative News, Vol. 2, pp. 2209-2309. It was obvious that Congress was concerned about "rubber stamp" approval of wiretap authorizations. The dual requirement of executive and judicial determination prior to such invasions may have been a determining factor in the passage of the legislation. As the Court of Appeals said in *Robinson, supra*:

Congress could justifiably feel it important that the public know that only an identifiable person subject to the political process could trigger the unknown, unseen, unheard intrusion into private affairs that constitutionally protected against unreasonable searches, entitled to freedom from self-incriminatory results, and presumptively innocent.

Since the statutory requirements were not met in this case, the wiretap order is invalid and the intercepted wire communications should be suppressed.

## II. THE ORDER AUTHORIZING THE WIRETAP WAS BEYOND THE AUTHORIZATION OF THE ATTORNEY GENERAL FOR THE APPLICATION.

From a reading of Section 2516 of Title 18, it is clear that a dual screening process is required. First, a responsible Justice Department official must determine that the procedure is warranted by the particular case. He must, in order to make this essential determination be satisfied that the proposed wiretap is related to a specific offense, that normal procedures are inadequate, and that statutory limitations are imposed upon the request. These requirements "go a long way toward guaranteeing that no abuse will happen." Senate Report No. 1097, U.S. Code and Congressional News, Vol. 2, p. 2185.

Secondly, a judicial officer above the magistrate level (District Court or Court of Appeals, see 18 U.S.C. § 2510(9)(a)) must exercise that detached judgment essential to meet the demands of the Fourth Amendment, so that "no greater invasion of privacy [would be] permitted than was necessary under the circumstances." *Berger v. New York*, 388 U.S. 41 at 57, 87 S.Ct. 1873, at 1882. This aspect of the statute provides for the judicial order to accommodate "the legitimate needs of law enforcement" by permitting the authorization of the carefully limited use of electronic surveillance. *Katz v. United States*, 389 U.S. 347 at 356, 88 S.Ct. 507, at 514 (1967).

Once the Executive Department, acting through the statutorily authorized official, has approved a "carefully limited" request to the Court for a wiretap order, it would defeat the purpose of the statute to allow the order to exceed the scope of the request. This "double check" procedure was designed to insure that "precise and discriminate circumstances" were present to meet the requirements of the Fourth Amendment. *Osborn v. United States*, 385 U.S. 328, 87 S.Ct. 429; *Katz v. United States*, *supra*.

Section 2518(1) of Title 18 provides that application under oath be made to a judge, and that such application

"shall state the applicant's authority to make such application," and shall include a:

(b) . . . (iii) particular description of the type of communications sought to be intercepted. . . .

In the instant case, the authority to make application was granted by Will Wilson, specially delegated by the Attorney General. See letters dated February 18, 1971, and February 25, 1971. (Appendices A2 and B2) The letters purport to authorize Maurice Merten to make application to a judge for an order authorizing drug agents "to intercept wire communications from a facility described . . . for twenty days." (Emphasis supplied) Significantly, the letter recites that a broader authorization was sought, to "intercept wire communications to and from" certain telephone numbers. Thus, the Attorney General limited the authorization to calls from the numbers. These letters of authorization were attached to the formal applications. (Appendices A3 and B3)

Notwithstanding the "carefully limited" scope of the authorization, application was made to the court for an order authorizing the interception of wire communications "to and from" certain numbers.

That this question of "to and from" is significant to the government as well as to the defense, it is only necessary to look at *United States v. Eckstein, et al.*, N.D.Cal. CR-71-1531 SC dismissed February 18, 1972, in which five letters of authorization were used. The first four speak in terms of "from," the fifth in terms of "to and from." Copies of these letters are attached as Appendix D.

Acting on the application "authorized by the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, who has been specially designated in this proceeding by the Attorney General . . .," the court authorized wire-taps "to and from" the facility clearly in excess of the executive authorization.

For these additional reasons, all wire communications to to the specified telephone should be suppressed.

### III. CONCLUSIONS

The entire area of electronic eavesdropping is a sensitive one. It augers the police state our forefathers sought to prohibit; and a future we must protect. The legislative history of Title III of the Safe Streets Act supports the conclusion that Congress was aware of the potential for abuse in blanket power to wiretap. When such a power is exercised, it must be with circumspection consistent with this legislative purpose. Here the Congress' fears were realized. The "specially designated" Assistant Attorney General, Will Wilson, "did not examine either file or expressly authorize either application." (See affidavits of Harold Shapiro, Appendix B6, and Henry Petersen, Appendix A6.) The applications were handled routinely in accordance with "standard procedures." The Court was told that Will Wilson, the special designee, had reviewed the files. He had not. Additionally the orders applied for and granted were in excess of the scope of the invasion approved. The Fourth Amendment requires that statutes such as this be interpreted strictly. Only by literal compliance can this most serious of intrusions into man's privacy be controlled. Any relaxation

of these self-imposed restraints can only weaken the Constitutional protections in this important area.

Accordingly, the conversations intercepted pursuant to the instant orders and all information obtained therefrom should be suppressed.

DATED: April 6, 1972

Respectfully submitted,

/s/ William L. Osterhoudt  
**WILLIAM L. OSTERHOUDT**  
 Attorney for Defendant  
 Vernon Baca

/s/ Andre T. Laborde  
**ANDRE T. LABORDE**  
 Attorney for Defendant  
 Armando Ramirez

/s/ Peter G. Keane  
**PETER G. KEANE**  
 Attorney for Defendant  
 Carmen Ramirez

/s/ Paul Alvarado  
**PAUL ALVARADO**  
 Attorney for Defendant  
 James Fernandez

/s/ James Giller  
**JAMES GILLER**  
 Attorney for Defendants  
 Umberto and Irene Chavez

/s/ Gerald H. Wilhelm  
**GERALD H. WILHELM**  
 Counsel for Defendant  
 Margaret Apodaca

/s/ Murray B. Petersen  
**MURRAY B. PETERSEN**  
 Attorney for Defendant  
 Dolores Fernandez

/s/ Claude O. Allen  
 Attorney for Defendant  
 Jesse Bustamante

/s/ Earle A. Partington  
**EARLE A. PARTINGTON**  
 Attorney for Defendant  
 George Apodaca

/s/ Clinton W. White  
**CLINTON W. WHITE**  
 Attorney for Defendant  
 Olivia Miramontes

/s/ J. Bradley Klemm  
**J. BRADLEY KLEMM**  
 Attorney for Defendant  
 Ann Fernandez

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Cr. No. 71-406 SAW

UNITED STATES OF AMERICA

v.

GEORGE APODACA

AFFIDAVIT

District of Columbia:

Sol Lindenbaum being duly sworn deposes and says:

At the times of the acts related in this affidavit I was and I am now the Executive Assistant to the Attorney General of the United States. I assist the Attorney General in the review of various matters which require his personal attention such as opinions, interpretations, decisions of the Board of Immigration Appeals, applications for pardon and other forms of Executive clemency, antitrust complaints, contracts, agreements, and proposed offers in compromise. See Title 28, Code of Federal Regulations, Section 0.6.

The Attorney General has refrained from designating any Assistant Attorney General to authorize, without his approval, the making of an application for an order permitting the interception of wire or oral communications under Title 18, United States Code, Section 2516 (1). Rather, the Attorney General has required that all requests for such authorization be referred to him for consideration. In the normal course of my duties, I review such requests and make recommendations to the Attorney General thereon. I have routinely reviewed such requests since February 1969 and, accordingly, have become familiar with the applicable statutory requirements and the actions taken by the Attorney General on such requests.

On February 16, 1971, and February 25, 1971, the Criminal Division of the Department of Justice addressed to the Attorney General requests for approval of authori-

zation to apply for interception orders with respect to certain telephones in California. The first request related to a telephone in Fremont, California, allegedly used by Umberto Jose Chavez and others. The second related to a telephone in Union City, California, allegedly used by a person identified only as "Pelone" and others. In each instance, the request was accompanied by copies of the proposed affidavit, application, and order, as well as a recommendation for approval from the Criminal Division.

With respect to the first, the Attorney General on February 18, 1971, approved the request that the authorization be given to Maurice Merten to make application for an interception order with respect to the mentioned telephone in Fremont, California. Attached is a copy of the Attorney General's personally initialed memorandum of that date to Will Wilson reflecting his favorable action on the request.

In the second instance, I reviewed the submitted material, concluded that the request satisfied the requirements of the statute and also concluded, from my knowledge of the Attorney General's actions on previous cases, that he would approve the request if submitted to him. Because the Attorney General was not available on this occasion, I approved the request pursuant to the authorization which he had given to me to act in the circumstances and caused his initials to be placed on a memorandum to Will Wilson. The memorandum approved a request that authorization be given to Maurice Merten to make application for an interception order. A copy of this memorandum is attached.

/s/ Sol Lindenbaum  
**SOL LINDENBAUM**  
Executive Assistant to the  
Attorney General of the  
United States

Subscribed and sworn to before me this 9th day of February, 1972.

/s/ Audrey Anne Crump

My Commission Expires August 31, 1976

Form DJ-150  
(Ed 4-26-65)

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

**MEMORANDUM**

TO : Will Wilson DATE: Feb. 18, 1971  
Assistant Attorney General  
Criminal Division JNM:PTW:lrt

FROM : John N. Mitchell  
Attorney General  
/s/ J.N.M.

SUBJECT: *Interception Order Authorization*

This is with regard to your recommendation that authorization be given to Maurice K. Merten of the Criminal Division to make application for an Order of the Court under Title 18, United States Code, Section 2518, permitting the interception of wire communications for a twenty (20) day period to and from telephone number 415-656-7173, located at 220 Carmelita Place, Fremont, California, in connection with the investigation into possible violations of Title 21, United States Code, Section 174, and Title 26, United States Code, Sections 4704 and 7237, by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown.

Pursuant to the power conferred on me by Section 2516 of Title 18, United States Code, you are hereby specially designated to exercise that power for the purpose of authorizing Maurice K. Merten to make the above-described application.

Form DJ-150  
(Ed 4-26-65)

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

**MEMORANDUM**

**TO : Will Wilson** DATE: Feb. 25, 1971  
Assistant Attorney General  
Criminal Division JNM:CLL:skh

**FROM : John N. Mitchell**  
Attorney General  
/a/ J.N.M.

**SUBJECT: *Interception Order Authorization***

This is with regard to your recommendation that authorization be given to Maurice Merten of the Criminal Division to make application for an Order of the Court under Title 18, United States Code, Section 2518, permitting the interception of wire communications for a twenty (20) day period to and from telephone number 415-471-7260, located at 1345 G Street, Union City, California, in connection with the investigation into possible violations of Title 21, United States Code, Section 174 and Title 26, United States Code, Sections 4704(a) and 7237(a) by persons identified only as "Pelone," "Jim," "Jesse", "Mondo," "Olivia" and others as yet unknown.

Pursuant to the powers conferred on me by Section 2516 of Title 18, United States Code, you are hereby specially designated to exercise those powers for the purpose of authorizing Maurice Merten to make the above-described application.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Cr. No. 71-406 SAW

UNITED STATES OF AMERICA

v.

GEORGE APODACA

AFFIDAVIT

District of Columbia:

Harold P. Shapiro, being duly sworn, deposes and says:

At the times of the events related in this affidavit, I was a Deputy Assistant Attorney General in the Criminal Division of the United States Department of Justice.

This affidavit describes the processing within the Criminal Division of the Department of Justice of a request for authorization to make application to a Federal Court for a wire interception order with respect to a certain telephone in Union City, California, allegedly used by a person identified only as "Pelone" and others.

The formal request for authorization to apply for the wire interception order was made by the Director of the Bureau of Narcotics and Dangerous Drugs on February 25, 1971. Prior to action on the request, the Department file, which included copies of the proposed affidavit, application, and order, was reviewed in a special Unit of the Organized Crime and Racketeering Section of the Criminal Division by an attorney whose primary function was to review the entire matter for form and substance with particular emphasis on assuring strict adherence to the required statutory, judicial and Constitutional standards. The attorney of that Unit handling the requests, Carl LoPresti, and his supervisor, Philip T. White, reviewed the file and recommended favorable action on the request. The file was then submitted for review to Edward T. Joyce, a Deputy Chief of the Organized Crime and Racketeering Section, who recommended

approval of its request and sent it to me. I examined the file and forwarded it to the Office of the Attorney General with a detailed recommendation that the authorization be granted. Following approval in the Office of the Attorney General, the Criminal Division dispatched the letter dated February 25, 1971, to Maurice Merten advising him that he was authorized to present the application to the court.

I signed Will Wilson's name to the letter of February 25, 1971, in accordance with the authorization of Will Wilson and the standard procedures of the Criminal Division. I regarded the signing of Will Wilson's name as a ministerial act, because Will Wilson had authorized me to sign his name to and dispatch such a letter of authorization in every instance in which the request had been favorably acted upon in the Office of the Attorney General. Will Wilson did not examine the files or expressly authorize the applications. Attached is a copy of Will Wilson's affidavit of September 15, 1971, respecting an authorization letter dated June 16, 1969, in which he stated that he had authorized me to sign letters of this nature.

/s/ Harold P. Shapiro  
**HAROLD P. SHAPIRO**  
Deputy Assistant Attorney  
General  
Criminal Division

Subscribed and sworn to before me this 9th day of February, 1972.

/s/ Audrey Anne Crump

My Commission Expires August 31, 1976

**AFFIDAVIT**

District of Columbia:

Will Wilson, Assistant Attorney General of the United States, being duly sworn, states:

I am Assistant Attorney General in charge of the Criminal Division of the United States Department of Justice and have been since January 1969.

I have authorized Deputy Assistant Attorney General Henry E. Petersen and Deputy Assistant Attorney General Harold Shapiro to sign my name to letters of authorization for application to United States District Courts for orders under Title 18, United States Code, Section 2518, after such application had been approved by the Attorney General.

The letter authorizing William G. Earle to make an application to the court for an interception order with respect to certain telephones commonly used by Martin and Jesse Sklaroff at Miami International Airport was signed for me by Mr. Petersen pursuant to my authorization. A copy of the carbon copy of this letter presently in the files of the Department of Justice is attached as Exhibit 1.

/s/ Will Wilson  
**WILL WILSON**  
Assistant Attorney General  
Criminal Division

Subscribed and sworn to before me this 15th day of Sept., 1971.

/s/ Audrey Anne Crump  
My Comm. Expires 8/31/76

Typed: June 9, 1969

WW:PTW:lrt

Mr. William G. Earle,  
Post Office Box 4139,  
160 Northeast Fourth Street,  
Miami, Fla.

June 16, 1969.

Dear Mr. Earle: This is with regard to your request for authorization to make application pursuant to the provisions of Section 2518 of Title 18, United States Code, for an order of the court authorizing the Federal Bureau of Investigation to intercept wire communications to and from four pay telephones at the Miami International Airport near the entrance to Concourse 2 between United and Northwest Airlines counters, carrying phone numbers 691-9981, 691-9566, 691-9797, and 691-9528.

I have reviewed your request and the facts and circumstances detailed in the affidavit of Special Agent Edwin J. Sharp and have determined that probable cause exists to believe that Martin Sklaroff, Jess Sklaroff, and others are engaged in the commission of an offense enumerated in Section 2516 of Title 18, United States Code, to wit: violations of Section 1084 of Title 18, United States Code, and a conspiracy to violate this statute. I have further determined that there exists probable cause to believe that the above person will make use of the described facilities in connection with that offense, that wire communications concerning the offenses will be intercepted, and that normal investigative procedures are unlikely to succeed or are too dangerous to be used.

Accordingly, you are hereby authorized under the power specially delegated to me in relation to the above described offenses by the Attorney General pursuant to the power conferred on the Attorney General by Section 2516, Title 18, United States Code, to make application to a judge of competent jurisdiction for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation to intercept wire communications from the facilities described above.

Sincerely,

WILL WILSON  
Assistant Attorney General.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Cr. No. 71-406 SAW

UNITED STATES OF AMERICA

v.

GEORGE APODACA

AFFIDAVIT

Henry E. Petersen, being duly sworn, deposes and says:

I am Assistant Attorney General in charge of the Criminal Division. At the times of the events related in this affidavit, I was a Deputy Assistant Attorney General in the Criminal Division, United States Department of Justice.

This affidavit describes the processing within the Criminal Division of the Department of Justice of the request for authorization to make application to a Federal Court for a wire interception order pertaining to a certain telephone in Fremont, California, allegedly used by Umberto Jose Chavez and others.

The formal request for authorization to apply for a wire interception order in this matter was made by the Director of the Bureau of Narcotics and Dangerous Drugs on February 12, 1971. Prior to action on the request, the Department file, which included copies of the proposed affidavit, application, and order, was reviewed in a special Unit of the Organized Crime and Racketeering Section of the Criminal Division by an attorney whose primary function was to review the entire matter for form and substance with particular emphasis on assuring strict adherence to the required statutory, judicial, and Constitutional standards. The attorney handling the matter, Philip T. White, of that Unit reviewed the file and recommended favorable action on the request. The file was then submitted for review to William S. Lynch, Chief of the Organized Crime and Racketeering Section, who recommended approval. The file was then sent to me.

I examined the file and forwarded it to the Office of the Attorney General with a detailed recommendation that the authorization be granted. Following approval in the Office of the Attorney General, the Criminal Division dispatched the letter dated February 18, 1971, to Maurice K. Merten advising him that he was authorized to present the application to the court.

I signed Will Wilson's name to the letter of February 18, 1971, in accordance with the authorization of Will Wilson and the standard procedures of the Criminal Division. I regarded the signing of Will Wilson's name as a ministerial act, because Will Wilson had authorized me to sign his name to and dispatch such a letter of authorization in every instance in which the request had been favorably acted upon in the Office of the Attorney General. Will Wilson did not examine either file or expressly authorize either application. Attached is a copy of Will Wilson's affidavit of September 15, 1971, respecting an authorization letter dated June 16, 1969, in which he stated that he had authorized me to sign letters of this nature.

/s/ Henry E. Petersen  
HENRY E. PETERSEN  
Assistant Attorney General  
Criminal Division

Subscribed and sworn to before me this 10th day of February, 1972.

/s/ Audrey Anne Crump  
My Commission Expires August 31, 1976

**AFFIDAVIT**

District of Columbia:

Will Wilson, Assistant Attorney General of the United States, being duly sworn, states:

I am Assistant Attorney General in charge of the Criminal Division of the United States Department of Justice and have been since January 1969.

I have authorized Deputy Assistant Attorney General Henry E. Petersen and Deputy Assistant Attorney General Harold Shapiro to sign my name to letters of authorization for application to United States District Courts for orders under Title 18, United States Code, Section 2518, after such application had been approved by the Attorney General.

The letter authorizing William G. Earle to make an application to the court for an interception order with respect to certain telephones commonly used by Martin and Jesse Sklaroff at Miami International Airport was signed for me by Mr. Petersen pursuant to my authorization. A copy of the carbon copy of this letter presently in the files of the Department of Justice is attached as Exhibit 1.

/s/ Will Wilson  
**WILL WILSON**  
Assistant Attorney General  
Criminal Division

Subscribed and sworn to before me this 15th day of Sept., 1971.

/s/ Audrey Anne Crump

My Commission Expires August 31, 1976

Typed: June 9, 1969

WW:PTW:lrt

June 16, 1969.

Mr. William G. Earle,  
Post Office Box 4139,  
160 Northeast Fourth Street,  
Miami, Fla.

Dear Mr. Earle: This is with regard to your request for authorization to make application pursuant to the provisions of Section 2518 of Title 18, United States Code, for an order of the court authorizing the Federal Bureau of Investigation to intercept wire communications to and from four pay telephones at the Miami International Airport near the entrance to Concourse 2 between United and Northwest Airlines counters, carrying phone numbers 691-9981, 691-9566, 691-9797, and 691-9528.

I have reviewed your request and the facts and circumstances detailed in the affidavit of Special Agent Edwin J. Sharp and have determined that probable cause exists to believe that Martin Sklaroff, Jess Sklaroff, and others are engaged in the commission of an offense enumerated in Section 2516 of Title 18, United States Code, to wit: violations of Section 1084 of Title 18, United States Code, and a conspiracy to violate this statute. I have further determined that there exists probable cause to believe that the above person will make use of the described facilities in connection with that offense, that wire communications concerning the offenses will be intercepted, and that normal investigative procedures are unlikely to succeed or are too dangerous to be used.

Accordingly, you are hereby authorized under the power specially delegated to me in relation to the above described offenses by the Attorney General pursuant to the power conferred on the Attorney General by Section 2516, Title 18, United States Code, to make application to a judge of competent jurisdiction for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation to intercept wire communications from the facilities described above.

Sincerely,

WILL WILSON  
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Cr. No. 71-406 SAW

UNITED STATES OF AMERICA

v.

GEORGE APODACA, et al.

AFFIDAVIT

District of Columbia:

John N. Mitchell, being duly sworn, deposes and says:

I held the office of Attorney General of the United States from January 21, 1969, through March 1, 1972.

On February 18, 1971, I approved a request for authority to apply for an interception order in this case and personally initialed a memorandum of that date reflecting my favorable action on the request. I have examined the original of this memorandum and certify that it bears my initials which were personally affixed by me on February 18, 1971. Attached is a copy of my personally initialed memorandum of that date reflecting my favorable action on the request.

My memorandum of approval in this case constituted a notification to the Assistant Attorney General of the Criminal Division that the discretionary action of approving the request to make application to the court for an interception order was taken by me.

/s/ John N. Mitchell  
JOHN N. MITCHELL

Subscribed and sworn to before me this 20th day of April, 1972.

/s/ Audrey Anne Crump  
My Commission Expires August 31, 1976

Form DJ-150  
(Ed 4-26-65)

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

**MEMORANDUM**

**TO : Will Wilson** DATE: Feb. 18, 1971  
Assistant Attorney General  
Criminal Division JNM:PTW:lrt

**FROM : John N. Mitchell**  
Attorney General  
*/s/ J.N.M.*

**SUBJECT: *Interception Order Authorization***

This is with regard to your recommendation that authorization be given to Maurice K. Merten of the Criminal Division to make application for an Order of the Court under Title 18, United States Code, Section 2518, permitting the interception of wire communications for a twenty (20) days period to and from telephone number 415-656-7173, located at 220 Carmelita Place, Fremont, California, in connection with the investigation into possible violations of Title 21, United States Code, Section 174, and Title 26, United States Code, Sections 4704 and 7237, by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown.

Pursuant to the power conferred on me by Section 2516 of Title 18, United States Code, you are hereby specially designated to exercise that power for the purpose of authorizing Maurice K. Merten to make the above-described application.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Cr. No. 71-406 SAW

UNITED STATES OF AMERICA

v.

GEORGE APODACA, ET AL.

**AFFIDAVIT**

District of Columbia:

Philip T. White, being duly sworn, deposes and says:

This affidavit recites my knowledge concerning the preparation of the memorandum addressed from John N. Mitchell to Will Wilson, dated February 18, 1971. Subject: Interception order authorization, a copy of which is attached.

I have no independent recollection regarding the preparation of the memorandum described above. However, the symbols appearing in the upper right hand corner of the memorandum signify that I composed the text of the memorandum and that my secretary, Lorraine R. Taylor, typed it.

My signed initials on the file copy indicate that I examined and approved the memorandum on or prior to February 18, 1971.

/s/ Philip T. White  
PHILIP T. WHITE

Subscribed and sworn to before me this 2 day of June, 1972.

/s/ Jo Ann M. Hall

My Commission Expires January 1, 1977

Form DJ-150  
(Ed 4-26-65)

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

**MEMORANDUM**

**TO : Will Wilson** DATE: Feb. 18, 1971  
Assistant Attorney General  
Criminal Division JNM:PTW:lrt

**FROM : John N. Mitchell**  
Attorney General  
*/s/ J.N.M.*

**SUBJECT: *Interception Order Authorization***

This is with regard to your recommendation that authorization be given to Maurice K. Merten of the Criminal Division to make application for an Order of the Court under Title 18, United States Code, Section 2518, permitting the interception of wire communications for a twenty (20) day period to and from telephone number 415-656-7173, located at 220 Carmelita Place, Fremont, California, in connection with the investigation into possible violations of Title 21, United States Code, Section 174, and Title 26, United States Code, Sections 4704 and 7237, by Umberto Jose Chavez, Lionel Medina Costilla, Jose Ybarra-Rivera, and others as yet unknown.

Pursuant to the power conferred on me by Section 2516 of Title 18, United States Code, you are hereby specially designated to exercise that power for the purpose of authorizing Maurice K. Merten to make the above-described application.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Cr. No. 71-406 SAW

UNITED STATES OF AMERICA

v.

GEORGE APODACA, ET AL.

AFFIDAVIT

Carl LoPresti, being duly sworn, deposes and says:

This affidavit recites my knowledge concerning the preparation of the memorandum addressed from John N. Mitchell to Will Wilson, dated February 25, 1971. Subject: Interception order authorization, copy attached.

I have no independent recollection regarding the preparation of the memorandum described above. However, the symbols appearing in the upper right hand corner of the memorandum signify that I probably prepared the text of the memorandum and that a secretary, Sandra K. Hauschild, typed it.

My signed initials on the file copies indicate that I examined and approved the memorandum on or prior to February 25, 1971.

/s/ Carl LoPresti  
**CARL LOPRESTI**

Subscribed and sworn to before me this 5th day of June, 1972.

/s/ Lillian M. Fries  
Notary Public  
**LILLIAN M. FRIES, Notary Public**  
Pittsburgh, Allegheny County, Penna.

My Commission Expires July 17, 1973

Form DJ-150  
(Ed 4-26-65)

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

**MEMORANDUM**

**TO : Will Wilson** DATE: Feb. 25, 1971  
Assistant Attorney General  
Criminal Division JNM:CLL:skh

**FROM : John N. Mitchell**  
Attorney General  
*/s/ J.N.M.*

**SUBJECT: *Interception Order Authorization***

This is with regard to your recommendation that authorization be given to Maurice Merten of the Criminal Division to make application for an Order of the Court under Title 18, United States Code, Section 2518, permitting the interception of wire communications for a twenty (20) day period to and from telephone number 415-471-7260, located at 1345 G Street, Union City, California, in connection with the investigation into possible violations of Title 21, United States Code, Section 174 and Title 26, United States Code, Sections 4704(a) and 7237(a) by persons identified only as "Pelone," "Jim," "Jesse," "Mondo," "Olivia" and others as yet unknown.

Pursuant to the powers conferred on me by Section 2516 of Title 18, United States Code, you are hereby specially designated to exercise those powers for the purpose of authorizing Maurice Merten to make the above-described application.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Cr. No. 71-406 SAW

[Filed May 31, 1972, C. C. Evensen, Clerk]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UMBERTO JOSE CHAVEZ, IRENE CHAVEZ, JAMES FERNANDEZ, ANN FERNANDEZ, OLIVIA MIRAMONTES, JESSE BUSTAMANTE, ARMANDO RAMIREZ, CARMEN RAMIREZ, DELORES FERNANDEZ, GEORGE APODACA, MARGARET APODACA, VERNON BACA, DEFENDANTS

MEMORANDUM AND ORDER

Defendants are charged with violating Federal narcotics laws (21 U.S.C. §§ 173, 174 and 18 U.S.C. § 1952). The question now before the Court concerns the legality of two telephone wiretaps (hereafter the "Chavez wiretap"<sup>1</sup> and the "Fernandez wiretap"<sup>2</sup>), which plaintiff admits were key sources of evidence against defendants.

Defendants move to suppress all evidence gained through the wiretaps, claiming that plaintiff failed to comply with the governing requirements of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2510, et seq.

That statute evinced the decision of Congress that telephone wiretapping is, in certain circumstances, necessary to curb criminal activity. To insure that rights guaranteed by the Fourth Amendment would not be abused by such tapping, various safeguards were included. Two are

---

<sup>1</sup> The "Chavez wiretap" was initiated pursuant to an order (dated February 18, 1972) of the Honorable Oliver J. Carter, Chief Judge of the Northern District of California.

<sup>2</sup> The "Fernandez wiretap" was initiated pursuant to an order of Chief Judge Carter dated February 25, 1972.

relevant to the question now before the Court. The first provides (in 18 U.S.C. § 2516):

The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge . . . for, and such judge may grant in conformity with section 2518 . . . an order authorizing or approving the interception of wire or oral communications . . .

It will be noted that two separate matters are covered. The Section, for one thing, empowers the Attorney General or any Assistant Attorney General specially designated by him *to authorize* application to a Federal judge for approval of a wiretap and, for another, it empowers the Attorney General specially *to designate* any Assistant Attorney General to authorize such an application. It should also be noted that authorizing an application is no mere ministerial act. Under the statute, authorization calls for the exercise of discretion as to whether or not any application should be made.

This careful delineation as to who could authorize an application and the requirement for applications to be authorized were intended to insure that only "a publicly responsible official subject to the political process" could exercise the discretion as to whether or not application should be made to a Federal judge for permission to wiretap. Senate Report 1097, 1968 U.S. Code Cong. & Adm. News at 2185. See *United States v. Robinson*, No. 71-1058 (5th Cir., Jan. 12, 1972) at 5-6. For a more complete review of the statutory history, see *United States v. Focarile*, Cr. No. 70-0483-M (D. Md., Feb. 22, 1972). A previously proposed bill had provided that *any* officer of the Department of Justice or *any* United States Attorney specially designated could authorize such application. Section 4(b) of S. 1495, in *United States v. Focarile*, *supra*, at 34. Even these quite strict proposed requirements, under which the Attorney General could have been held responsible on the theory of his power over subordinates, were not tight enough to satisfy Congress. Congress went further and required that only officers subject to Senatorial confirmation should have the

power to decide whether or not to authorize an application. As Herbert J. Miller, Jr., then Assistant Attorney General, Criminal Division, Department of Justice, testified, the advantage of the § 2516 over § 4(b) of S. 1495 is that the former gives "greater assurance of a responsible executive determination of the need and justifiability of each interception." *Hearings Before the Subcommittee on Constitutional Rights of the Committee of the Judiciary, Wiretapping and Eavesdropping Legislation*, 87th Cong., First Session, at 365, in *United States v. Focarile, supra*, at 35. "[I]n itself," the Senate Report states, "[§ 2516] should go a long way toward guaranteeing that no abuses will happen." 1968 U.S. Code Cong. & Adm. News at 2185.

The second relevant statutory provision states (in 18 U.S.C. § 2518):

(1) Each application for an order authorizing or approving the interception of a wire or oral communication . . . shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, *and the officer authorizing the application;*

(4) Each order authorizing or approving the interception of any wire or oral communication shall specify—  
.

(d) the identity of the agency authorized to intercept the communications *and of the person authorizing the application;* [emphasis added].

This plainly requires that both (1) the application to the Court for authorization to wiretap and (2) the order of authorization identify the "authorizing" officer.

The designated requirements are far more than technicalities. They are vital to the statutory scheme by which Congress intended to insure that wiretapping remain a closely regulated procedure, amenable to public

and Congressional scrutiny. As the Court stated in *United States v. Focarile, supra*, at 40-41:

Placement of the authority to make the decision of whether or not to authorize an application for a wiretap in the highest level of government and in a publicly responsible official subject to the political process was accomplished by the specific language of § 2516 (1) which had been suggested by the Justice Department in 1961 and which was included in the major subsequent legislative proposals. It was realized, however, as time went on that § 2516(1) dealt only with the *fact of authorization* of the application. As has been seen, subsequent proposals, bit by bit, added the requirement that *the person who actually authorized the application must be made known* to the judge to whom the application was submitted and to those others to whom the contents of his order would be disclosed (see § 2518(4) (d), § 2518(8) (d), and § 2519(1) (f)). Knowledge by the judge, by the persons to whom the contents of the order would ultimately be disclosed, and Congress and the public as a whole through the Reports of the Director of the Administrative Office of the United States Courts provided for in § 2519(3) were deemed to be necessary and appropriate to allow those concerned and interested the opportunity to fix the responsibility for the fact of the authorization of the application in a specific and identifiable person who is subject to the political process. [Footnote omitted.]

The evidence from plaintiff itself shows that the mandates of Congress were not met as to either of the wiretaps here under scrutiny.

In the case of the Chavez wiretap, subordinate officials in the Department of Justice forwarded, to Attorney General John Mitchell, an application requesting authorization to apply to a Federal judge for permission to wiretap. The Attorney General personally initialed a memorandum to Mr. Will Wilson, an Assistant Attorney General, stating:

Pursuant to the power conferred on me by Section 2516 of Title 18, . . . you are hereby specially designated to exercise that power for the purpose of authorizing Maurice K. Merton [a Special Attorney of the Department of Justice] to make the above-described application.

Although the language of the memorandum appears to designate Mr. Wilson as the Assistant Attorney General to be vested with the discretion to authorize application for the wiretap, the affidavit of Mr. Mitchell, filed herein, declares that he intended the memorandum to be his own authorization for the application. Affidavit of John Mitchell, filed May 4, 1972.<sup>3</sup> The memorandum was then forwarded, with the appropriate file to the office of Mr. Will Wilson. Mr. Wilson, however never examined the file. Mr. Henry Petersen, an assistant to Mr. Wilson, performed the alleged "ministerial act" of signing Mr. Wilson's name to a letter addressed to Maurice K. Merten, authorizing application to a Federal judge. Affidavit of Henry E. Petersen, filed Feb. 11, 1972.

Subsequently, an application for approval of the wiretap was submitted to the Honorable Oliver J. Carter, Chief Judge of this District. The application, signed by Mr. Merten, states, without qualification:

. . . the Attorney General . . . has specially designated in the proceeding the Assistant Attorney General . . . , The Honorable Will Wilson, to authorize affiant to make this application for an Order authorizing the interception of wire communications. This letter of authorization signed by the Assistant Attorney General is attached to this application. . . .

Chief Judge Carter, appropriately relying on this clear language, approved the application and accordingly stated in his order that the application had been,

<sup>3</sup> For present purposes, the Court assumes that the Memorandum to Will Wilson constitutes an authorization under § 2516 and does not reach defendants' contentions (1) that the Memorandum is insufficient on its face to constitute an authorization and (2) that the affidavit is so inconsistent with the wording of the memorandum as to throw doubt on its credibility.

authorized by the Assistant Attorney General . . . , the Honorable Will Wilson, who has been specially designated in this proceeding by the Attorney General . . . to exercise the powers conferred on the Attorney General by Section 2516 . . . .

As to the Fernandez wiretap, permission to apply to a Federal judge for approval was also forwarded to the Office of the Attorney General. A memorandum, worded similarly to that quoted above, was dispatched to Will Wilson even though Mr. Mitchell had neither seen nor approved this memorandum. The fact was that the Attorney General's initials were affixed to it by Mr. Sol Lindenbaum, Executive Assistant. He states in his affidavit, filed in this Court February 11, 1972:

. . . I reviewed the submitted material, concluded that the request satisfied the requirements of the statute and also concluded, from my knowledge of the Attorney General's actions on previous cases, that he would approve the request if submitted to him. Because the Attorney General was not available on this occasion, I approved the request pursuant to the authorization which he had given to me to act in the circumstances and caused his initials to be placed on a memorandum to Will Wilson.

The memorandum was then delivered to Mr. Wilson's office, where, as in the case of the Chavez wiretap, a subordinate performed the alleged "ministerial act" of signing Mr. Wilson's name to a letter authorizing application to a Federal judge. Again, Mr. Wilson never examined the application. Affidavit of Harold P. Shapiro, filed February 11, 1972.

The application to Chief Judge Carter for the Fernandez wiretap states:

. . . the Attorney General . . . has specially designated in the proceeding the Assistant Attorney General . . . , The Honorable Will Wilson, to authorize affiant to make this application for an Order authorizing the interception of wire communications. This

letter of authorization signed by the Assistant Attorney General is attached to this application. . . .

Chief Judge Carter approved the application, stating in his order, that the application had been:

authorized by the Assistant Attorney General . . . , the Honorable Will Wilson, who has been specially designated in this proceeding by the Attorney General . . . , to exercise the powers conferred on the Attorney General by Section 2516. . . .

*By plaintiff's own admission, it is clear that in the case of both wiretaps:* (1) Chief Judge Carter was misinformed by plaintiff as to the name of the individual who had authorized application; and (2) the only individual named in the application had never examined it, much less exercised discretion to authorize it. No clearer evidence could be adduced to show complete frustration of the opportunity for Congressional and public scrutiny required by the statute as a means to protect Fourth Amendment rights. The applications for these wiretaps (as well as the orders relying on them) erroneously show that they were authorized by the same man. In fact, neither of the individuals who authorized the applications was in any way identified to Chief Judge Carter, Congress or the public. Evidence secured through the wiretaps must therefore be suppressed for failure to follow the Congressional mandate set out in §§ 2518(1)(a) and 2518(4)(d). *United States v. Focarile, supra*, at 46-48; *United States v. Casale*, Cr. No. 14927 (M.D. Pa., April 8, 1972).

In regard to the Fernandez wiretap, the government also admits that neither the Attorney General nor a specially designated Assistant Attorney General ever authorized the application. Where rights so fundamental as those protected by the Fourth Amendment are concerned, non-compliance with a federal statute intended to protect those rights cannot be excused. Good faith simply is not sufficient. *United States v. Robinson, supra*; *United States v. Cihal*, 336 F. Supp. 261 (W.D. Pa. 1972); *United States v. Aquino*, 338 F. Supp. 1080 (E.D. Mich. 1972); *United Sattes v. Baldassari*, 338 F. Supp. 904 (M.D. Pa. 1972).

**IT IS HEREBY ORDERED** that the wiretap communications intercepted pursuant to the orders of Court dated February 18, 1971, and February 25, 1971, and the fruits thereof, are suppressed.

Dated: May 30, 1972.

**/s/ Stanley A. Weigel  
Judge**

SUPREME COURT OF THE UNITED STATES

No. 72-1319

UNITED STATES, PETITIONER

v.

UMBERTO JOSE CHAVEZ, ET AL.

ORDER ALLOWING CERTIORARI—Filed May 21, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.